

6-13-2012

Sky Canyon Properties, LLC v. The Golf Club at Black Rock, LLC Clerk's Record v. 2 Dckt. 39831

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IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company, et al

Plaintiffs/Appellants
vs.

THE GOLF CLUB AT BLACK ROCK, LLC, an
Idaho limited liability company

Defendants / Respondents

*Appealed from the District Court of the First Judicial District
of the State of Idaho, in and for the County of Kootenai.*

John F. Magnuson
PO Box 2350
Coeur d'Alene, ID 83814

Attorney for Respondents

Peter J. Smith
601 E Front Ave., Ste 502
Coeur d'Alene, ID 83814

Attorney for Appellants

39831
VOLUME 2

FILED - ORIGINAL

JUN 13 2012

Supreme Court Court of Appeals
Entered on A.S. by

Date	Code	User	Judge
4/1/2011	NCOC	HUFFMAN	New Case Filed - Other Claims Benjamin R. Simpson
		HUFFMAN	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Smith, Peter J. (attorney for Sky Canyon Properties LLC) Receipt number: 0014407 Dated: 4/1/2011 Amount: \$88.00 (Check) For: Sky Canyon Properties LLC (plaintiff) Benjamin R. Simpson
	SUMI	LEU	Summons Issued Benjamin R. Simpson
4/15/2011	ACKS	BAXLEY	Acceptance Of Service on 04/15/11 by John F Magnuson for The Golf Club at Black Rock Benjamin R. Simpson
4/21/2011	NOAP	LEU	Notice Of Appearance Benjamin R. Simpson
		LEU	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Magnuson, John F. (attorney for Golf Club At Black Rock, LLC) Receipt number: 0017358 Dated: 4/21/2011 Amount: \$58.00 (Check) For: Golf Club At Black Rock, LLC (defendant) Benjamin R. Simpson
	MNDQ	SREED	Motion To Disqualify Judge Benjamin R. Simpson Benjamin R. Simpson - Magnuson
4/22/2011	ORDR	LARSEN	Order On Defendant's Motion For Disqualification Benjamin R. Simpson
	DISA	LARSEN	Disqualification Of Judge Simpson - Automatic Benjamin R. Simpson
	ORDR	CLAUSEN	Order Assigning District Judge on Disqualification John T. Mitchell Without Cause - John T. Mitchell
5/5/2011	ANSW	LEU	Answer And Counterclaim John T. Mitchell
5/16/2011	HRSC	CLAUSEN	Hearing Scheduled (Scheduling Conference 07/25/2011 04:00 PM) John T. Mitchell
	NOTC	CLAUSEN	Notice of Scheduling Conference John T. Mitchell
5/25/2011	HRVC	CLAUSEN	Hearing result for Scheduling Conference held on 07/25/2011 04:00 PM: Hearing Vacated John T. Mitchell
	STIP	VICTORIN	Stipulation for Scheduling John T. Mitchell
6/3/2011	MISC	CLEVELAND	Plaintiff's Reply to Counterclaim John T. Mitchell
6/6/2011	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 08/15/2011 11:00 AM) 1 HOUR - Magnuson John T. Mitchell
6/27/2011	HRSC	CLAUSEN	Hearing Scheduled (Court Trial Scheduled 02/27/2012 09:00 AM) 2 DAYS John T. Mitchell
	ORDR	CLAUSEN	Scheduling Order, Notice of Trial Setting and Initial Pretrial Order John T. Mitchell
7/14/2011	CONT	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 08/15/2011 11:00 AM: Continued 1 HOUR - Magnuson John T. Mitchell
	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 08/24/2011 02:30 PM) Magnuson - 1 Hour John T. Mitchell

Date	Code	User	Judge
7/19/2011	HRVC	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 08/24/2011 02:30 PM: Hearing Vacated Magnuson - 1 Hour
	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 09/27/2011 04:00 PM) Magnuson - 1 Hour
7/27/2011	NOTD	CRUMPACKER	Notice Of Intention to Take Deposition Pursuant to Idaho Rules of Civil Procedure Rule 30(b)(6)
9/2/2011	NTSV	CRUMPACKER	Notice Of Service of Plaintiffs 1st Set of Interrogatories & Requests for Production of Documents Propounded to Defendant
9/8/2011	HRSC	CLAUSEN	Hearing Scheduled (Motion for Summary Judgment 11/16/2011 04:00 PM) Peter Smith
	HRVC	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 09/27/2011 04:00 PM: Hearing Vacated Magnuson - 1 Hour
9/19/2011	NOTR	BAXLEY	Notice Of Transcript Delivery - Deponent Roger Rummel
10/3/2011	AFFD	CRUMPACKER	Affidavit of John F Magnuson in Support of Motion for Extension of Time within Which to Responde to "Plaintiffs" 1st Set of Interrogatories & Requestes for Production of "Documents Propounded to Defendant
	MOTN	CRUMPACKER	Motion for Extension of Time Within Which to Respond to "Plaintiffs" 1st Set of Interrogatories & Requests for Production of Documents Propounded to "Defendant
10/11/2011	NTSD	CRUMPACKER	Notice Of Discovery
	NTSD	CRUMPACKER	Notice Of Discovery
10/12/2011	NTWD	LEU	Notice Of Withdrawal Of Motion For Extension Of Time Within Which To Respond to "Plaintiffs' First Set Of Interrogatories And Request For Production Of Document Propounded to Defendant"
10/19/2011	MNSJ	BAXLEY	Plaintiffs' Motion For Summary Judgment
	MEMS	BAXLEY	Plaintiffs' Memorandum In Support Of Motion For Summary Judgment
	AFFD	BAXLEY	Affidavit Of Peter J Smith IV
	FILE	BAXLEY	*****New File #2 Created EXPANDO***** (Plaintiffs' Submission Of Certified Documents In Support Of Their Motion For Summary Judgment)
	MISC	BAXLEY	Plaintiffs' Submission Of Certified Documents In Support Of Their Motion For Summary Judgment (In EXPANDO #2)
	NOHG	BAXLEY	Notice Of Hearing on 11/16/11 at 4:00 pm
	MNSJ	BAXLEY	Motion For Summary Judgment (Defendant)

Date	Code	User	Judge
0/19/2011	MEMS	BAXLEY	Memorandum In Support Of Motion For Summary Judgment By Defendant / Counterclaim Plaintiff The Golf Club At Black Rock LLC John T. Mitchell
	AFIS	BAXLEY	Affidavit Of Roger Rummel In Support of Defendant's Motion For Summary Judgment John T. Mitchell
	FILE	BAXLEY	*****New File #3 Created (EXPANDO)***** (Affidavit Of John F Magnuson In Support of Defendant's Motion For Summary Judgment) John T. Mitchell
	AFIS	BAXLEY	Affidavit Of John F Magnuson In Support of Defendant's Motion For Summary Judgment (In EXPANDO #3) John T. Mitchell
	NOHG	BAXLEY	Notice Of Hearing on 11/16/11 at 4:00 pm John T. Mitchell
11/3/2011	MEMO	ZOOK	Memorandum in Opposition to Motion for Summary Judgment of Plaintiff/Counterclaim Defendants John T. Mitchell
	AFFD	ZOOK	Second Affidavit of John F Magnuson in Opppsition to Motion for Summary Judgment of Plaintiff/Counterclaim Defendants John T. Mitchell
11/4/2011	MOTN	BAXLEY	Motion To Strike John T. Mitchell
	NOHG	BAXLEY	Notice Of Hearing Regarding Motion To Strike on 11/16/11 at 4:00 pm John T. Mitchell
	OBJT	BAXLEY	Plaintiffs' Objection To Defendant's Motion For Summary Judgment John T. Mitchell
11/10/2011	MEMO	BAXLEY	Memorandum In Opposition To Plaintiffs' Motion To Strike John T. Mitchell
	MISC	BAXLEY	Reply To Opposition To Motion For Summary Judgment Of Defendant John T. Mitchell
11/16/2011	DCHH	CLAUSEN	Hearing result for Motion for Summary Judgment scheduled on 11/16/2011 04:00 PM: District Court Hearing Held Court Reporter: JULIE FOLAND John T. Mitchell
12/13/2011	MEMO	CLAUSEN	Memorandum Decision and Order on Sky Canyon's Motion to Strike, and on Cross-Motions for Summary Judgment John T. Mitchell
12/14/2011	HRVC	CLAUSEN	Hearing result for Court Trial Scheduled scheduled on 02/27/2012 09:00 AM: Hearing Vacated 2 DAYS John T. Mitchell
12/21/2011	FILE	CRUMPACKER	New File Created #4 (2&3 are expandos) John T. Mitchell
12/22/2011	MCAF	BAXLEY	Defendant's Memorandum Of Costs And Attorney Fees John T. Mitchell
	AFIS	BAXLEY	Affidavit Of John F Magnuson In Support Of Defendant's Memorandum Of Costs And Attorney Fees John T. Mitchell
1/10/2012	STIP	ZOOK	Stipulation John T. Mitchell

Case: CV-2011-0002786 Current Judge: John T. Mitchell
 Sky Canyon Properties LLC, etal. vs. Golf Club at Black Rock LLC

Date	Code	User	Judge
2/8/2012	CVDI	LEU	Civil Disposition entered for: Golf Club at Black Rock LLC, Defendant; Donald, Joe K, Plaintiff; Donald, Lisbeth Lillemor, Plaintiff; Fallon, Craig R, Plaintiff; Fallon, M Ellen, Plaintiff; Gianotti, Carolyn M, Plaintiff; Gianotti, Wayne A, Plaintiff; Samuel, Robert C, Plaintiff; Sky Canyon Properties LLC, Plaintiff; Stanley, Buddy C, Plaintiff; Stanley, Judith L, Plaintiff; Wicks, Evelyn L, Plaintiff; Wicks, Russell M, Plaintiff. Filing date: 2/8/2012
	FJDE	LEU	Final Judgment
	STAT	LEU	Case status changed: Closed
2/22/2012	AFFD	HUFFMAN	Affidavit Of Peter J Smith IV In Support Of Motion For Disqualification
	MEMO	HUFFMAN	Memorandum In Support Of Motion For Disqualification
	MOTN	HUFFMAN	Motion For Disqualification
	MOTN	CRUMPACKER	Motion for Reconsideration of Final Judgment entered February 8, 2012
	AFFD	CRUMPACKER	Affidavit of Jay Lockhart in Support of Motion for Reconsideration
2/23/2012	FILE	LEU	New File Created-----#5-----CREATED
3/6/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion to Disqualify 03/27/2012 03:00 PM)
	STAT	CLAUSEN	Case status changed: Reopened
3/7/2012		CLAUSEN	Notice of Hearing
	MEMS	BAXLEY	Legal Memorandum In Support Of Motion For Reconsideration
3/16/2012		SREED	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Miischelle Fulgham Receipt number: 0011995 Dated: 3/16/2012 Amount: \$101.00 (Check) For: Donald, Joe K (plaintiff), Donald, Lisbeth Lillemor (plaintiff), Fallon, Craig R (plaintiff), Fallon, M Ellen (plaintiff), Gianotti, Carolyn M (plaintiff), Gianotti, Wayne A (plaintiff), Samuel, Robert C (plaintiff), Sky Canyon Properties LLC (plaintiff), Stanley, Buddy C (plaintiff), Stanley, Judith L (plaintiff), Wicks, Evelyn L (plaintiff) and Wicks, Russell M (plaintiff)
	BNDC	SREED	Bond Posted - Cash (Receipt 11997 Dated 3/16/2012 for 100.00)
	BNDC	SREED	Bond Posted - Cash (Receipt 11998 Dated 3/16/2012 for 139.75)
	APDC	SREED	Appeal Filed In District Court
	APSC	SREED	Appealed To The Supreme Court
	NOTC	SREED	Notice of Appeal

Case: CV-2011-0002786 Current Judge: John T. Mitchell
 Sky Canyon Properties LLC, etal. vs. Golf Club at Black Rock LLC

Date	Code	User		Judge
3/19/2012	AFFD	BAXLEY	Affidavit Of John F Magnuson RE Motion To Disqualify	John T. Mitchell
3/20/2012	MEMO	BAXLEY	Memorandum In Opposition To Motion For Disqualification	John T. Mitchell
	AFFD	BAXLEY	Affidavit Of John F Magnuson RE Motion For Disqualification	John T. Mitchell
3/26/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion 05/30/2012 04:00 PM) Reconsider - Smith	John T. Mitchell
3/27/2012	DCHH	CLAUSEN	Hearing result for Motion scheduled on 03/27/2012 03:00 PM: District Court Hearing Hel Court Reporter: JULIE FOLAND	John T. Mitchell
	ORDR	CLAUSEN	Order Denying Motion for Disqualification of Judge Mitchell	John T. Mitchell
3/28/2012	NOHG	CRUMPACKER	Notice Of Hearing	John T. Mitchell
4/2/2012	HRSC	CLAUSEN	Hearing Scheduled (Motion 05/29/2012 09:00 AM) Reconsider - Smith	John T. Mitchell
	HRVC	CLAUSEN	Hearing result for Motion scheduled on 05/30/2012 04:00 PM: Hearing Vacated Reconsider - Smith	John T. Mitchell
		CLAUSEN	AMENDED Notice of Hearing	John T. Mitchell

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STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 OCT 19 PM 3:26

CLERK DISTRICT COURT

DEPUTY

PETER J. SMITH IV
ISB #6997
LUKINS & ANNIS, P.S.
Suite 502
601 E. Front Avenue
Coeur d'Alene, ID 83814-5155
Telephone: (208) 667-0517
Facsimile: (208) 664-4125
Email: pis@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

NOTICE OF HEARING

Date: November 16, 2011

Time: 4 o'clock p.m.

NOTICE IS HEREBY GIVEN that on Wednesday, November 16, 2011, at the hour of
4 o'clock p.m., or as soon thereafter as counsel may be heard, in the Courtroom of the above

NOTICE OF HEARING: 1

entitled Court, 324 West Garden Avenue, Coeur d'Alene, Idaho, before the Honorable John T. Mitchell, the Plaintiffs' will call on for hearing their Motion for Summary Judgment.

DATED this 19th day of October, 2011.

LUKINS & ANNIS, P.S.

By 
PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE


I HEREBY CERTIFY that on the 19th day of October, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☒ Hand Delivered
☐ Overnight Mail
☐ Telecopy (FAX) 208-446-1132


PETER J. SMITH IV

NOTICE OF HEARING: 2

JOHN F. MAGNUSON

Attorney at Law

P.O. Box 2350

1250 Northwood Center Court, Suite A

Coeur d'Alene, ID 83814

Phone: (208) 667-0100

Fax: (208) 667-0500

ISB #04270

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED:

2011 OCT 19 PM 2:39

CLERK DISTRICT COURT

Patty Bailey
DEPUTY 5/13

Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company;
ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
wife; WAYNE A. GIANOTTI AND
CAROLYN M. GIANOTTI, Trustees of
the Gianotti Revocable Trust U-A dated
January 29, 1991; RUSSELL M. WICKS
AND EVELYN L. WICKS, husband and
wife; BUDDY C. STANLEY AND
JUDITH L. STANLEY, Trustees of the
Stanley Family Trust dated February 26,
2004; CRAIG R. FALLON AND M.
ELLEN FALLON, husband and wife,

Plaintiffs/Counter-
Defendants,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

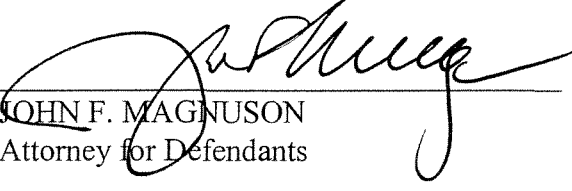
CASE NO. CV-11-2786

**MOTION FOR SUMMARY
JUDGMENT**

COMES NOW Defendant The Golf Club at Black Rock, LLC, by and through its attorney of record, John F. Magnuson, and respectfully moves the Court, pursuant to IRCP 56, for entry of summary judgment as follows. The Golf Club at Black Rock, LLC ("the Golf Club") seeks summary judgment in favor of the Golf Club, and against Plaintiffs, on Plaintiffs' claim for declaratory relief. The Golf Club further seeks entry of summary judgment in its favor as to its counterclaim for declaratory relief. This motion is supported by the pleadings and submissions on file herein, together with the Affidavits of John F. Magnuson and Roger Rummel (both filed herewith), together with the Golf Club's supporting memorandum.

Oral argument is requested.

DATED this 19th day of October, 2011.

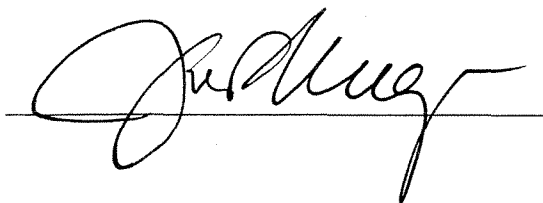

JOHN F. MAGNUSON
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155
Email: pjs@lukins.com

☐ U.S. MAIL
☒ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ FACSIMILE
(208) 664-4125

A handwritten signature in black ink, appearing to read "Peter J. Smith", is written over a horizontal line.

BR-GOLF CLUB-SKY CANYON.MOT SJ.wpd

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
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Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company;
ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
wife; WAYNE A. GIANOTTI AND
CAROLYN M. GIANOTTI, Trustees of
the Gianotti Revocable Trust U-A dated
January 29, 1991; RUSSELL M. WICKS
AND EVELYN L. WICKS, husband and
wife; BUDDY C. STANLEY AND
JUDITH L. STANLEY, Trustees of the
Stanley Family Trust dated February 26,
2004; CRAIG R. FALLON AND M.
ELLEN FALLON, husband and wife,

Plaintiffs/Counter-
Defendants,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

STATE OF IDAHO
COUNTY OF KOOTENAI } ss
FILED:

2011 OCT 19 PM 2:39

CLERK DISTRICT COURT
Patty Bayles
DEPUTY *18*

CASE NO. CV-11-2786

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT BY DEFENDANT/
COUNTERCLAIM PLAINTIFF THE
GOLF CLUB AT BLACK ROCK,
LLC**

COMES NOW Defendant/Counterclaim Plaintiff The Golf Club at Black Rock, LLC (hereafter "the Golf Club"), by and through its attorney of record, John F. Magnuson, and respectfully submits this Memorandum in support of its Motion for Summary Judgment. This Memorandum is supported by the pleadings and submissions on file herein, together with the Affidavits of John F. Magnuson and Roger Rummel (both filed herewith).

I. UNDISPUTED MATERIAL FACTS.

A. The Black Rock CC&Rs and the Club Property.

1. On July 31, 2001, Black Rock Development, Inc., as Declarant, recorded as Kootenai County Instrument No. 1689309 a certain set of "Covenants, Conditions & Restrictions" for "Black Rock," a Planned Unit Development. See Magnuson Affidavit at Ex. A. Those "Covenants, Conditions & Restrictions" are referred to herein as "the CC&Rs."

2. The CC&Rs encumbered various parcels of real property containing approximately 659 acres. Id. at Ex. A.

3. Some of the property encumbered by the CC&Rs was thereafter platted by Black Rock Development, Inc., as the Declarant, for residential purposes, through various phases. See Magnuson Affidavit at ¶4. Also included within the 659+/- acres was the "Club Property."

4. The "Club Property" is defined at Section 2.17 of the CC&Rs as the real property then owned by "The Club at Black Rock, LLC," an entity unrelated to the Golf Club. See Magnuson Affidavit at ¶5; Rummel Affidavit at ¶3.

5. Pursuant to Section 2.17 of the CC&Rs, the "Club Property" is defined to include a golf course, golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, and other amenities. See Magnuson Affidavit at Ex. A, p. 3.

6. The “Club Property” that was made a part of the CC&Rs was formerly owned by The Club at Black Rock, LLC. See Rummel Affidavit at ¶5.

B. The Declarant and the Period of Declarant Control.

7. The Declarant named in the CC&Rs is Black Rock Development, Inc. Id. at ¶6. Black Rock Development, like the Club at Black Rock, was an entity owned and controlled by Marshall Chesrown. Id. The “Period of Declarant Control” is defined by the CC&Rs as ending on the earlier of:

- (a) The date which is 20 years [after the recordation of the CC&Rs, or July 31, 2011], or
- (b) The date on which the Declarant has recorded the plats of all Expansion Property and sold 90% of the Lots to Owners other than Declarant or Builder in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Association [the Homeowners Association] in writing....

See Magnuson Affidavit at Ex. A, p. 6.

8. “Expansion Property” is defined by the CC&Rs as “[s]uch additional real property now owned or in the future acquired by Declarant (including any successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.” See Magnuson Affidavit at Ex. A, p. 5.

9. Unless and until the Declarant, or the Declarant’s successor, has made a determination that there will be no additional “Expansion Property,” as that phrase is defined in the CC&Rs, the period of Declarant control will continue to run for up to twenty (20) years. See CC&Rs at Articles 2.31 and 2.43.

10. Article 22.2 provides:

When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

See Magnuson Affidavit at Ex. A, p. 57. No such notice has ever been given to the Black Rock HOA by Black Rock Development or the Golf Club as the claimed successor Declarant. See Rummel Affidavit at ¶21.

C. Allowed Uses for the “Club Property.”

11. The “Club Property” consists of in excess of 206 acres of land presently used for golf course and golf related recreational purposes. It includes the golf course, the clubhouse, and the like. See Rummel Affidavit at ¶7.

12. Article 17.1 of the CC&Rs provides that the golf course “will be privately owned and operated” and is “not part of the common area....” See Magnuson Affidavit at Ex. A, p. 49.

13. The CC&Rs further provide, “The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club property shall be used.” Id. at p. 50.

14. There is no requirement that the “Club Property” be utilized in perpetuity for golf purposes. Id. In fact, it can be developed in whole or in part, either in tandem or separate from golf-related activities, for residential purposes or any other lawful use. Id.

D. Transfer of Declarant Rights.

15. The CC&Rs allow the Declarant, during the period of Declarant control, to transfer or assign any or all of the Declarant rights under the CC&Rs. See Magnuson Affidavit at Ex. A, p. 63 (Article 27.7).

16. Any such assignment shall be by recorded instrument. Id. The assignment may be

made to “any successor who takes title to all or part of the Property [which includes the Club Property] in a bulk purchase for the purpose of development and sale.” Id.

E. Transfer of the Club Property.

17. At some point in time prior to the summer of 2010, operational and financial issues arose with respect to the Club at Black Rock and Black Rock Development. See Rummel Affidavit at ¶10. The lender for both entities was Washington Trust Bank. Id.

18. On August 11, 2010, the Club at Black Rock executed a “Non-Merger Warranty Deed in Lieu of Foreclosure” conveying substantially all of the “Club Property” to Washington Trust Bank. See Magnuson Affidavit at Ex. C. Contemporaneously therewith, Black Rock Development, as Declarant under the CC&Rs, executed a recordable “Assignment of Declarant Rights” to Washington Trust Bank (WTB). Id. at Ex. D.

19. WTB thereafter deeded the “Club Property” to West Sprague Avenue Holdings, LLC (“West Sprague”), a WTB holding company. See Magnuson Affidavit at Ex. E. WTB contemporaneously assigned the Declarant rights to West Sprague. Id. at Ex. F.

F. The Golf Club’s Purchase of the Club Property.

20. The Golf Club closed on the purchase of the “Club Property” from West Sprague on November 1, 2010. See Rummel Affidavit at ¶13. Through that closing, the Golf Club acquired title to the “Club Property” and an assignment of the Declarant rights from West Sprague. Id. See also Magnuson Affidavit at Exs. G and I.

21. The property acquired by the Golf Club (to wit, the “Club Property”) consisted of 206+/- acres, a clubhouse, all associated equipment, fixtures, inventories, and the like, which were purchased in bulk for the price of \$6 million. See Rummel Affidavit at ¶23.

22. The Golf Club thereafter began to develop and sell memberships associated with the “Club Property,” and exercised the Declarant rights (which it has done for the past 12 months). Id. at ¶24.

23. The Golf Club specifically retained the ability to declare future “Expansion Property,” with respect to the Black Rock PUD in accordance with the terms of the CC&Rs, as well as the ability to develop and sell any or all of the “Club Property” in the event the Golf Club decided to pursue that option, in lieu of or in addition to Golf Course operations. Id. at ¶¶19 and 20.

G. Conditional Assignment of Declarant Rights.

24. On November 5, 2010, Black Rock Development, the Declarant named under the original CC&Rs, executed and delivered to the Golf Club a “Conditional Assignment of Declarant Rights,” which was recorded as Kootenai County Instrument No. 2290387000. See Magnuson Affidavit at Ex. J.

25. Through that assignment, Black Rock Development acknowledged that the assignment would take place in the event of any defect, whether procedural or substantive, in the Assignment of Declarant Rights that Black Rock Development had previously made for the benefit of WTB. Id.

II. PROCEDURAL BACKGROUND.

On April 1, 2011, the Plaintiffs, claiming to hold title to at least one lot in the Black Rock PUD, filed suit against the Golf Club, seeking a declaratory ruling that the Golf Club did not qualify to hold the Declarant rights under Article 27.7 of the CC&Rs. The Golf Club answered by asserting a counterclaim for declaratory relief that sought entry of a decree that it is the duly-qualified successor to the Declarant rights of Black Rock Development under the CC&Rs, and that it is

entitled to all rights and benefits as the Successor Declarant.

The Golf Club now moves for summary judgment. The Golf Club seeks summary judgment in its favor, both as to Plaintiffs' claim and as to the Golf Club's counterclaim.

III. APPLICABLE STANDARDS.

The Court is well-acquainted with the applicable standards to apply in resolving motions for summary judgment.

The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

See IRCP 56(c).

Neither party to this action has requested a trial by jury. Accordingly, the following additional standards apply:

When an action, as here, will be tried before the Court without a jury, the trial court as the trier of fact is entitled to arrive at the most probable inferences based upon the undisputed evidence properly before it and grant the summary judgment despite the possibility of conflicting inferences. Intermountain Forest Management v. Louisiana Pacific Corp., 136 Idaho 233, 235, 31 P.3d 921, 923 (2001). Resolution of a possible conflict between the inferences is within the responsibilities of the fact finder. Cameron v. Neil, 130 Idaho 898, 900, 950 P.2d 1237, 1239 (1997)....

P.O. Ventures, Inc. v. Loucks Family Revocable Trust, 144 Idaho 233, 237, 159 P.3d 870 (2007).

IV. ARGUMENT.

A. Applicable Rules of Construction.

Covenants such as the ones at bar constitute contracts and are analyzed under generally accepted principles of contract construction. That process is two-fold. First, the trial court is to determine whether a given covenant or term is ambiguous. To this end, the trial court consults the

plain language of the covenant. Pinehaven Planning Board v. Brooks, 138 Idaho 826, 829, 70 P.3d 664 (2003); Brown v. Perkins, 129 Idaho 189, 193, 923 P.2d 434 (1996).

In determining whether or not a given covenant is ambiguous or unambiguous, the Court must be cognizant of the following:

Words or phrases that have established definitions in common use or settled legal meanings are not rendered ambiguous merely because they are not defined in the document where they are used.

City of Chubbuck v. City of Pocatello, 127 Idaho 198, 899 P.2d 411 (1995). Rather, a covenant is ambiguous when it is capable of more than one reasonable interpretation on a given issue. Pinehaven Planning Board v. Brooks, 138 Idaho at 829. Ambiguity in the first instance is a question of law. Brown v. Perkins, 129 Idaho at 192. To determine ambiguity, the Court must not only give words or phrases their common use or settled meanings, it must view the agreement as a whole. Brown v. Perkins, 129 Idaho at 193.

Turning to the second step, if the covenant is deemed to be unambiguous by the Court, then the Court must apply the covenant as a matter of law. City of Chubbuck v. City of Pocatello, 127 Idaho at 201. “Where there is no ambiguity, there is no room for construction; the plain meaning governs.” Post v. Murphy, 125 Idaho 473, 475, 873 P.2d 118 (1984).

On the other hand, if there is an ambiguity in a given covenant, then the interpretation is a question of fact. In this regard, the trial court must determine the intent of the parties at the time the instrument was drafted. Brown v. Perkins, 129 Idaho at 193. To determine the drafters’ intent, the Court looks to “the language of the covenants, the existing circumstances at the time of the formulation of the covenants, and the conduct of the parties.” Id.

**B. There is No Disputed Issue of Fact That the
Period of Declarant Control Remains in Effect.**

The CC&Rs unambiguously define the “Period of Declarant Control” as follows:

The period beginning on the date this Declaration is first recorded in the office of the Recorder of Kootenai County, Idaho [July 31, 2001], and ending on the earlier of: (a) the date which is twenty years later, or (b) the date on which the Declarant has recorded the plats of all Expansion Property and sold 90% of the Lots to Owners other than Declarant or Builder in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the [Black Rock Homeowners] Association in writing.

See Magnuson Affidavit at Ex. A, p. 6, Article 2.43.

“Expansion Property” is defined as follows:

Such additional real property now owned or in the future acquired by Declarant (including any successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

Id. at p. 5, Article 2.31.

Consistent with the foregoing, Article 22 of the CC&Rs provides in pertinent part:

22.1. Reservation of Right to Expand. Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded....

22.2. Completion of Expansion. When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

Id. at p. 57 (Articles 22.1 and 22.2).

There is no disputed issue of fact that neither Black Rock Development (the original Declarant) nor The Golf Club at Black Rock (the Successor Declarant) has ever given the

Association written notice that “no further property shall be added to the Project.” Accordingly, under the unambiguous definition of the “Period of Declarant Control,” there has been no determination that there will be no recorded plats of any additional Expansion Property (“When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Association in writing.”). Accordingly, the initial twenty year term of the “Period of Declarant Control,” as provided in Article 2.43, remains in effect, extending to July 31, 2021.

**C. There is No Disputed Issue of Fact That the
Declarant Rights Under the CC&Rs Have Been
Assigned to the Golf Club.**

There is no disputed issue of fact that Black Rock Development was the Declarant originally named under the CC&Rs. There is no disputed issue of fact that Washington Trust Bank (WTB) acquired the “Club Property” by deed from the Club at Black Rock, LLC and, contemporaneously therewith, acquired the Declarant Rights of Black Rock Development through a recorded “Assignment of Declarant Rights.” See Magnuson Affidavit at Exs. C and D. There is also no disputed issue of fact that WTB thereafter conveyed the “Club Property” and assigned the Declarant Rights to West Sprague Avenue Holdings, LLC, a WTB holding company. Id. at Exs. E and F. There is also no disputed issue of fact that on November 1, 2010, West Sprague deeded the “Club Property” and assigned the “Declarant Rights” to the Golf Club. Id. at Exs. G and I. For purposes of summary judgment, the inquiry as to whether or not the Golf Club holds the Declarant Rights under the CC&Rs need go no further. However, to the extent that Plaintiffs challenge the assignment from Black Rock Development to WTB (and thereby the assignments from WTB to West Sprague and from West Sprague to the Golf Club), those challenges must fail.

Following the Golf Club's purchase of the "Club Property," itself a portion of the "Property" as defined in Article 2.47 of the CC&Rs, it acquired a "conditional assignment of Declarant Rights" from Black Rock Development. See Magnuson Affidavit at Ex. J. If Black Rock Development's transfer of the Declarant Rights to WTB was void (a point not conceded), then Black Rock Development retained the Declarant Rights (as the period of "Declarant Control" remained in effect). Pursuant to the "Conditional Assignment of Declaratory Rights" from Black Rock Development to the Golf Club, Black Rock Development acknowledged:

This Conditional Assignment of Declarant Rights is made by and between Black Rock, on the one hand, and the Golf Club at Black Rock, LLC, in the nature of a conditional assignment. The conditional nature is this: in the event of any defect, whether procedural or substantive, under the Assignment of Declarant Rights recorded as Kootenai County Instrument No. 22772260000 [the Assignment from Black Rock Development to WTB], and in the further event that any said defect (without conceding the existence of the same) results in the retention of Declarant Rights by Black Rock, then Black Rock assigns, and does hereby assign, said rights to the Golf Club at Black Rock, LLC through this Assignment.

Id. at Ex. J. Simply put, there is no disputed issue of fact that the Golf Club has received by recorded assignment the Declarant Rights under the CC&Rs, whether from WTB (as successor assignee of Black Rock Development) or from Black Rock Development (under the conditional assignment). There is no disputed issue of fact that all rights of Black Rock Development, as the Declarant under the CC&Rs, are now held by the Golf Club.

D. There is No Disputed Issue of Fact That The Golf Club Qualifies as a Successor Declarant Under Articles 2.50 and 27.7 of the CC&Rs.

1. Applicable Provisions of the CC&Rs.

Article 2.50 of the CC&Rs defines a "Successor Declarant" as "any party or entity to whom Declarant [Black Rock Development] assigns any or all of its rights, obligations or interests as

Declarant, as permitted by Section 27.7 and evidenced by an assignment or deed of record....” See Magnuson Affidavit at Ex. A, p. 7, Article 2.50.

Article 27.7 provides:

Declarant may assign all or any part of the Special Declarant Rights or any of Declarant’s other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale.

Id. at p. 63, Article 27.7.

2. There is No Disputed Issue of Fact That the Golf Club Acquired “All or Part of the Property in a Bulk Purchase.”

The Golf Club acquired a parcel of some 206+/- acres of “the Property,” which is defined in the CC&Rs as the “Club Property.” See Rummel Affidavit at ¶23; Magnuson Affidavit at Ex. A, p. 3, Article 2.17. Article 27.7 allows for the assignment of the Declarant Rights “to any successor who takes title to all or part of the Property....” There is no disputed issue of fact that the Golf Club satisfies this requirement.

Article 27.7 states that the successor Declarant must have acquired said property “in a bulk purchase.” There is no disputed issue of material fact that this requirement is also satisfied. The “Club Property” constitutes “part of the Property” as those phrases are defined by the CC&Rs. The Golf Club purchased 206+/- acres, the Clubhouse, all related equipment, fixtures, inventories, and the like, in one bulk purchase for \$6 million. See Rummel Affidavit at ¶23. Black’s Law Dictionary defines a bulk sale as: “Any transfer in bulk, and not in the ordinary course of the transferor’s business, of a major part of the materials, supplies, merchandise or other inventory of an enterprise.” Put another way, “A sale of substantially all the inventory of a trade or business to one person in one transaction.”

There is no disputed issue of material fact that the “Club Property” constitutes part of “the Property,” as those phrases are defined in the CC&Rs, and that the Golf Club acquired all of the materials, supplies, merchandise, and inventory, whether real or personal, of and relating to a portion of “the Property,” in a singular bulk purchase.

**3. There is No Disputed Issue of Fact That The Property
Was Purchased in Bulk “For the Purpose of Development and Sale.”**

Article 27.7 provides that a successor Declarant is one who takes title to “part of the Property in a bulk purchase for the purpose of development and sale.” There is no disputed issue of material fact, nor can there be, that the Golf Club’s purchase was for the purpose of development and sale. No less than three reasons support this result.

First, at the time the Golf Club purchased the “Club Property,” there were no existing memberships in or to the “Club Property.” See Rummel Affidavit at ¶14. See also Magnuson Affidavit at Ex. M. Following its November 1, 2010 closing, the Golf Club developed its own Membership Program. See, e.g., Magnuson Affidavit at Ex. L. Having developed that Membership Program, the Golf Club, post-closing, has since sold approximately 172 such memberships. See Rummel Affidavit at ¶18. Hence, there is no issue of fact that both before and after the November 1, 2010 closing, the Golf Club has objectively an intention to acquire the Club Property in a bulk purchase for the purpose of development and sale.

Second, pursuant to the CC&Rs, the Owner of the “Club Property,” which is now the Golf Course, has “the exclusive right to determine from time-to-time, in its sole discretion without notice or approval of any change, how and by whom the Club Property shall be used.” See Magnuson Affidavit at Ex. A, p. 49, Article 17.1. Moreover, the Owner of the Club Property (the Golf Club)

can change, eliminate, or cease operation of any or all of the Club Property, and determine the prospective use of the same. Id.

The Golf Club acquired the Club Property in part for purposes of development and sale of Memberships. However, recognizing that there was no guarantee of financial success through said operations, the Golf Course always retained all available rights with respect to the “Club Property,” including those rights recognized under the CC&Rs which allow the Golf Club to keep all options open with respect to the development and sale of the same. See Rummel Affidavit at ¶19. There is no issue of fact that it was the Golf Club’s desire to develop and sell memberships in and to the “Club Property” on terms acceptable to all in order to create a vibrant and collegial golf course and recreational community atmosphere. Id. There is also no issue of material fact that, in the event that goal no longer proved to be financially feasible or possible, that the Golf Club retained its rights to develop and sell the “Club Property” in any manner it so chose provided the same complied with the CC&Rs. Id. There was no limitation on the Golf Club’s intention to develop and sell the Club Property that would otherwise serve to obfuscate or frustrate the language of Article 27.7.

Third, the CC&Rs defined the “Property” as including not only the 659+/- acres identified on Exhibit A to the CC&Rs (which in and of itself includes the 206+/- acres that comprised the Club Property), but also any potential “Expansion Property.” See Magnuson Affidavit at Ex. A, p. 7, Article 2.47. In other words, so long as the Declarant’s right to add additional “Expansion Property” has not been relinquished in a writing submitted to the Black Rock Homeowners’ Association (which it has not), then an assignment of the Declarant Rights coupled with the acquisition of a part of the Property brings with it the additional right to develop and sell future “Expansion Property” during the Period of Declarant Control.

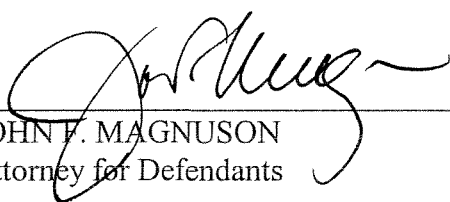
Put another way, if there is some issue of fact as to the intention of the Golf Club in acquiring the Club Property (insofar as it relates to "development and sale"), a point not conceded, there is nonetheless no issue of fact that the Golf Club acquired the right to develop and sell any potential Expansion Property, for the remaining term of the Period of Declarant Control, as part of its acquisition of the Club Property and the Declarant Rights. A primary purpose of annexing Expansion Property in conformance with the terms of the CC&Rs would be to develop and sell the same.

Based upon these three reasons, there is no genuine issue of material fact, when the Court views the facts at bar as the ultimate trier of fact, that would support a finding that the requirements of Article 27.7 have not been satisfied. Simply put, the CC&Rs, as to these issues, are unambiguous and there are no issues of material fact that would support any conclusion but that the Golf Club has acquired the Declarant Rights under the CC&Rs and is qualified to hold the same in accordance with the terms thereof.

V. CONCLUSION.

Based upon the reasons and authorities set forth herein, The Golf Club at Black Rock, LLC, as both Defendant and Counterclaim Plaintiff, requests entry of summary judgment in its favor, ordering, adjudging, and decreeing that the Golf Club is the holder of the Declarant rights under the CC&Rs and duly-qualified to hold the same in accordance with the terms of Article 27.7 thereof.

DATED this 19th day of October, 2011.



JOHN F. MAGNUSON
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
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STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2011 OCT 19 PM 2:39

CLERK DISTRICT COURT

Ruthie Bradley
DEPUTY *pb*

Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
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SKY CANYON PROPERTIES, LLC, an
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ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
wife; WAYNE A. GIANOTTI AND
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Plaintiffs/Counter-
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vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

CASE NO. CV-11-2786

**AFFIDAVIT OF ROGER RUMMEL
IN SUPPORT OF DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

ROGER RUMMEL, being first duly sworn upon oath, deposes and says:

1. I am over the age of 18, have personal knowledge of the matters set forth herein, and am otherwise competent to testify thereto.

2. I am a managing member of The Golf Club at Black Rock, LLC, an Idaho limited liability company and the Defendant named herein. The Golf Club at Black Rock, LLC (hereafter "the Golf Club") was formed on August 26, 2010 through the filing of Articles of Organization with the Idaho Secretary of State.

3. The Golf Club is an entity wholly separate and distinct, with no cross-ownership or any other relationship of any kind or nature, with the entity known as The Club at Black Rock, LLC. The Club at Black Rock, LLC was an entity that previously owned certain real property and facilities that were purchased by The Golf Club and which give rise to this proceeding.

4. On or about July 31, 2001, a certain set of "Covenants, Conditions, and Restrictions" were recorded as Kootenai County Instrument No. 1689309 as against property generally described as the "Black Rock Planned Unit Development." A copy of those CC&Rs is attached to Mr. Magnuson's accompanying affidavit as Exhibit A. They will be referred to herein as "the Black Rock CC&Rs."

5. The Black Rock CC&Rs encumber certain specifically-described property (also known as the Black Rock PUD), including certain specifically defined "Club Property." The "Club Property," at the time the CC&Rs were recorded, was identified as including a golf course, a golf

clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and other recreational facilities. The "Club Property" was made a part of the CC&Rs. At that time, the "Club Property" was owned by The Club at Black Rock, LLC.

6. The Declarant named in the CC&Rs was Black Rock Development, Inc. Black Rock Development, Inc., like The Club at Black Rock, LLC, was an entity that, to my knowledge, was owned and controlled by Marshall Chesrown.

7. Attached as Exhibit B to the Affidavit of Mr. Magnuson is a compilation of illustrative maps and property information available from Kootenai County which generally shows the layout of the "Club Property," as that phrase is defined in the CC&Rs. The "Club Property" consists of in excess of 206 acres of land presently used for the foregoing recreational purposes, including the golf course, club house, and the like.

8. While the Club Property was under the ownership of The Club at Black Rock, LLC, Mr. Chesrown's entity, memberships were made available for purchase to individuals. Those memberships were in the nature of revocable licenses. They were not equity interests in the Club Property or the Club itself. The CC&Rs do not mandate that the Club Property, as part of the PUD, be perpetually devoted to said recreational purposes.

9. Article 17.1 of the CC&Rs notes that the golf course "will be privately owned and operated" and is "not a part of the common area...." The CC&Rs further provide, "The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used." Moreover, the Club has the right to change, eliminate, or cease operation of any or all of the Club Property. This is confirmed at Article 17 of the CC&Rs.

10. The Club at Black Rock, LLC owned and operated the Club Property following recordation of the CC&Rs. I was personally a member of that Club during that time, as were many others. Our membership interests were memorialized by revocable licenses purchased in the nature of "Membership Agreements." At some point in time prior to the summer of 2010, operational and financial issues arose with respect to The Club at Black Rock, LLC (the then-owner and operator of the Club Property) and Black Rock Development, Inc., the original project developer of the Black Rock PUD and the Declarant named in the CC&Rs. I am personally aware that the lender for the Club at Black Rock, LLC, and a lender for Black Rock Development, Inc., was Washington Trust Bank.

11. On August 11, 2010, the Club at Black Rock executed a "Non-Merger Warranty Deed in Lieu of Foreclosure" conveying substantially all of the "Club Property" to Washington Trust Bank. A copy of that Deed is attached to Mr. Magnuson's Affidavit as Exhibit C. Contemporaneously therewith, Black Rock Development, as Declarant under the CC&Rs, executed a recordable Assignment of Declarant Rights under the CC&Rs to Washington Trust Bank. A copy of the Assignment is attached as Exhibit D to Mr. Magnuson's Affidavit.

12. Washington Trust Bank thereafter deeded the "Club Property" to West Sprague Avenue Holdings, LLC, a Washington Trust Bank holding company. A copy of the Deed is attached to Mr. Magnuson's Affidavit as Exhibit E. Washington Trust Bank also assigned the declarant rights it had taken from Black Rock Development, by assignment, to West Sprague Avenue Holdings, LLC. A copy of that Assignment is attached as Exhibit F to Mr. Magnuson's Affidavit.

13. The Golf Club thereafter purchased the "Club Property" from West Sprague Avenue Holdings, through a closing that occurred on November 1, 2010. Through that closing, the Golf

Club acquired title to the "Club Property" and an Assignment of Declarant Rights under the CC&Rs that West Sprague Avenue Holdings had received from Washington Trust Bank (which in turn had received the same from Black Rock Development). Copies of the Deed and Assignment are attached to Mr. Magnuson's Affidavit as Exhibits G and I.

14. There was no Membership Plan in effect at the "Club Property" at the time the Golf Club purchased the same. The Club at Black Rock had terminated the preexisting Membership Plan prior to the closing. A copy of the Termination Notice is attached to Mr. Magnuson's Affidavit at Exhibit M.

15. As previously noted, as part of the Golf Club's purchase of the "Club Property" from Washington Trust Bank and West Sprague Avenue Holdings, the Golf Club received an assignment of the declarant rights under the CC&Rs.

16. Article 27.7 of the CC&Rs provides that the declarant rights under the CC&Rs may be assigned by the Declarant (Black Rock Development, Inc.) "to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale."

17. At the time the Golf Club purchased the "Club Property," and acquired an assignment of the declarant rights from Washington Trust Bank and West Sprague Avenue Holdings, its intention with respect to the "Club Property" was as set forth below.

18. First, the intention was to develop and sell memberships for use of the "Club Property." To that end, the Golf Club has since sold approximately one hundred seventy-two (172) memberships allowing individuals to utilize the "Club Property" in accordance with the terms of the applicable Membership Agreements.

19. Second, the Golf Club always intended to retain all available rights with respect to

the “Club Property” in terms of keeping all options with respect to development and sale of the same open. Specifically, it was the Golf Club’s desire to develop and sell memberships in and to the “Club Property” on terms acceptable to all in order to create a vibrant and collegial golf course and recreational community atmosphere. However, in the event that such a goal no longer proved to be financially feasible or successful, at some future point in time, then the Golf Club intended to retain all rights to develop and sell the “Club Property” in a manner compliant with the CC&Rs.

20. For example, pursuant to Article 17.1 of the CC&Rs, the Club has the right to change the use of the Club property in its discretion. Moreover, Article 16 gives the holder of the declarant rights (which are claimed by the Golf Club) the authority to develop a portion of the property (including the “Club Property”) in such phases as the Declarant deems appropriate. See Article 16.1.2(f).

21. Further, during the period of declarant control (which extends to July 31, 2021), in accordance with the terms of Article 2.43 of the CC&Rs, the Declarant has the ability to annex additional property into the PUD for sale and development. Article 22.2 provides: “When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the [Black Rock Homeowners] Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.” The Declarant retains the right to designate additional property as Expansion Property, and no such notice has been given to the Black Rock Homeowners’ Association as would otherwise be required to terminate said right under Article 22.2.

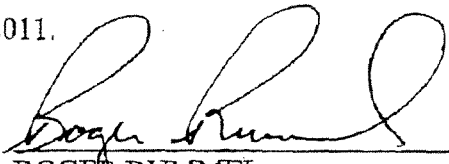
22. In the event it does not prove financially, economically, or otherwise feasible for the Golf Club to maintain operations of the “Club facilities” as a golf club, at some future date, then the

Golf Club, as the successor Declarant, would retain, and did intend to retain, the right to develop and sell any or all of the "Club Property" in any lawful manner compliant with the CC&Rs. This is consistent with the terms of Article 27.7 of the CC&Rs.

23. The Golf Club acquired the golf course related "Club Property," including the aforementioned 206+/- acres, the Clubhouse, related equipment, fixtures, inventories, and the like, all associated with the golf course, in one bulk purchase for a price of \$6 million.

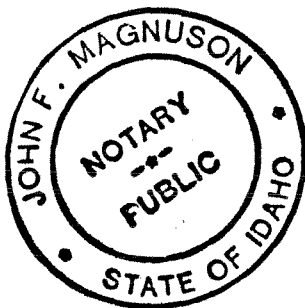
24. The Golf Club continues to develop and sell memberships associated with the "Club Property," and to exercise the declarant rights and has done so since purchasing the "Club Property" on November 1, 2010. In so doing, the Golf Club did not waive any rights, nor did it intend to, and retains all rights associated with all development and sale of the "Club Property" as otherwise allowed by the CC&Rs.

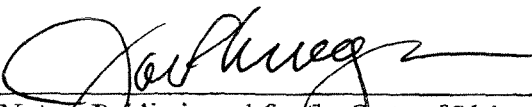
DATED this 19th day of October, 2011.



ROGER RUMMEL

SUBSCRIBED AND SWORN to before me this 19th day of October, 2011.





Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 9/10/14

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of October, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155
Email: pjs@lukins.com

☐ U.S. MAIL
☒ HAND DELIVERED
☐ OVERNIGHT MAIL
☐ FACSIMILE
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BR-GOLF CLUB-SKY CANYON.AFF Rummel.wpd

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Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Plaintiffs,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant.

AFFIDAVIT OF JOHN F. MAGNUSON IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - PAGE 1

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2011 OCT 19 PM 2:39

CLERK DISTRICT COURT

Patty Bayle
DEPUTY *PO*

NO. CV-11-2786

**AFFIDAVIT OF JOHN F.
MAGNUSON IN SUPPORT OF
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

(In Expando #3)

0474

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Counterclaim Plaintiff,

vs.

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Counterclaim Defendants.

STATE OF IDAHO)
)
COUNTY OF KOOTENAI)

I, JOHN F. MAGNUSON, being first duly sworn on oath, depose and say:

1. I am the attorney of record for Defendant "The Golf Club at Black Rock, LLC." I have personal knowledge of the matters set forth herein, am over the age of eighteen (18), and am otherwise competent to testify thereto.

2. On July 31, 2001, Black Rock Development, Inc., as Declarant, recorded as Kootenai County Instrument No. 1689309 a certain set of "Covenants, Conditions and Restrictions" for "Black

**AFFIDAVIT OF JOHN F. MAGNUSON IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - PAGE 2**

0475

Rock,” a Planned Unit Development. A true and correct copy of said “Covenants, Conditions and Restrictions” (referred to herein as “the CC&R’s”) is attached hereto as Exhibit A.

3. The CC&R’s, at Exhibit A, encumbered various parcels of real property containing approximately 659 acres. See Exhibit A at Ex. A.

4. The property encumbered by the CC&R’s was thereafter platted by Black Rock Development, Inc., as Declarant, for residential purposes, in various phases. Also included within the 659 +/- acres encumbered by the CC&R’s was the “Club Property.”

5. The “Club Property” is defined at Section 2.17 of the CC&R’s as the real property owned by The Club at Black Rock, LLC, including a golf course, golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, and a private beach. See Exhibit A at p. 3 (Section 2.17).

6. Attached hereto as Exhibit B is a compendium of information prepared and submitted for illustrative purposes based upon Kootenai County property tax records. Exhibit B contains six (6) separate sheets that each contain identifying information for parcels included within the “Club Property.” Following each said six (6) sheets is a map illustrating that portion of the “Club Property” described on the preceding sheet of data. For example, that portion of the “Club Property” described on the data sheet numbered “1” in the lower right hand corner is visually depicted on Page “2” of Exhibit B. By way of further example, the portion of the “Club Property” described on the data sheet attached as Page 11 of Exhibit B is visually depicted on the following page (Page 12).

7. On August 11, 2010, Washington Trust Bank recorded a “Non-Merger Warranty Deed in Lieu of Foreclosure.” The Deed conveyed title to those portions of the “Club Property”

described therein. A true and correct copy of said Deed is attached hereto as Exhibit C. The Deed was executed by The Club at Black Rock, LLC, as the owner of the "Club Property" described therein.

8. Contemporaneous with the recordation of the "Non-Merger Warranty Deed in Lieu of Foreclosure," Washington Trust Bank caused to be recorded an "Assignment of Declarant Rights" as Kootenai County Instrument No. 2277226000. A true and correct copy of said Assignment of Declarant Rights, is attached hereto as Exhibit D. Pursuant to said Assignment of Declarant Rights, Black Rock Development, Inc., as Declarant under the CC&R's, assigned the Declarant Rights to Washington Trust Bank.

9. On August 24, 2010, Washington Trust Bank deeded those portions of the "Club Property" it had acquired from The Club at Black Rock, LLC through the "Non-Merger Warranty Deed in Lieu of Foreclosure" (Exhibit C) to West Sprague Avenue Holdings, LLC. A true and correct copy of the Quit Claim Deed by which said conveyance was made, and recorded as Kootenai County Instrument No. 2278842000, is attached hereto as Exhibit E.

10. Attached hereto as Exhibit F is a true and correct copy of Kootenai County Instrument No. 2278843000. Said instrument constitutes an "Assignment of Deed in Lieu of Foreclosure Documents," by which Washington Trust Bank, at the time it conveyed title to those portions of the "Club Property" it had received from The Club at Black Rock, LLC, also assigned the rights it had acquired from Black Rock Development, Inc. (the Declarant Rights) to West Sprague Avenue Holdings, LLC, a wholly-owned holding company utilized by Washington Trust Bank to hold the referenced property (the specifically-described portions of the "Club Property" in Exhibit E) and the

foreclosure documents related to the same. A true and correct copy of said "Assignment of Deed in Lieu of Foreclosure Documents" is attached hereto as Exhibit F.

11. The Golf Club at Black Rock, LLC was formed as an Idaho limited liability company on August 26, 2010.

12. The Golf Club at Black Rock, LLC, as purchaser, thereafter reached agreement with West Sprague Avenue Holdings, LLC for the purchase of those portions of the "Club Property" which had been conveyed by The Club at Black Rock, LLC to Washington Trust Bank (which in turn had conveyed the same to West Sprague Avenue Holdings, LLC), together with the Declarant Rights under the CC&R's previously assigned by Black Rock Development, Inc. to Washington Trust Bank (which in turn assigned the same to West Sprague Avenue Holdings, LLC at the time Washington Trust Bank conveyed the "Club Property" to West Sprague). A portion of the "Club Property," consisting of the "Beach Club" (also described as Lot 1, Block 15, Black Rock, according to the Plat recorded in Book "I" of Plats at Page 299) was separately held by Washington Trust Bank (as opposed to West Sprague Avenue Holdings, LLC). The Golf Club at Black Rock, LLC reached agreement with Washington Trust Bank as part of its agreement with West Sprague Avenue Holdings, LLC, which provided for The Golf Club at Black Rock, LLC's purchase of the Beach Club from Washington Trust Bank through a closing set to occur simultaneously with The Golf Club's acquisition of the "Club Property" held by West Sprague Avenue Holdings.

13. Attached hereto as Exhibit G is a true and correct copy of the "Warranty Deed" recorded November 1, 2010 by which West Sprague Avenue Holdings, LLC conveyed title to those portions of the "Club Property" exclusive of the "Beach Club" to The Golf Club at Black Rock,

LLC. Said Deed was recorded November 1, 2010 as Kootenai County Instrument No. 2288325000.

14. Attached hereto as Exhibit H is a true and correct copy of the "Warranty Deed" recorded November 1, 2010 by which Washington Trust Bank conveyed title to the "Beach Club" to The Golf Club at Black Rock, LLC.

15. Attached hereto as Exhibit I is a true and correct copy of the "Assignment of Declarant Rights" recorded November 1, 2010 as Kootenai County Instrument No. 2288327000, by which West Sprague Avenue Holdings, LLC assigned to The Golf Club at Black Rock, LLC the Declarant Rights under the CC&R's.

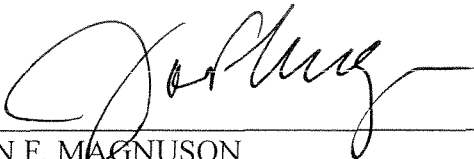
16. Attached hereto as Exhibit J is a true and correct copy of a "Conditional Assignment of Declarant Rights," executed by Black Rock Development, Inc., assigning whatever Declarant Rights Black Rock Development, Inc. (as Declarant) may have retained under the CC&R's. That Assignment was executed by Black Rock Development, Inc. on November 5, 2010, for the benefit of The Golf Club at Black Rock, LLC, and thereafter recorded as Kootenai County Instrument No. 2290387000.

17. Attached hereto as Exhibit K is a true and correct copy of deposition Exhibit 4 to the Rule 30(b)(6) deposition of The Golf Club at Black Rock, LLC, taken August 30, 2011.

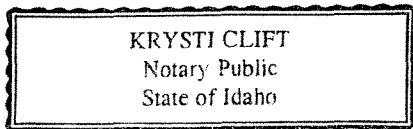
18. Attached hereto as Exhibit L is a true and correct copy of deposition Exhibit 5 to the Rule 30(b)(6) deposition of The Golf Club at Black Rock, LLC, taken August 30, 2011.

19. Attached hereto as Exhibit M is a true and correct copy of deposition Exhibit 9 to the Rule 30(b)(6) deposition of The Golf Club at Black Rock, LLC, taken August 30, 2011.

DATED this ¹²19 day of October, 2011.


JOHN F. MAGNUSON

SUBSCRIBED AND SWORN to before me this 19th day of October, 2011.



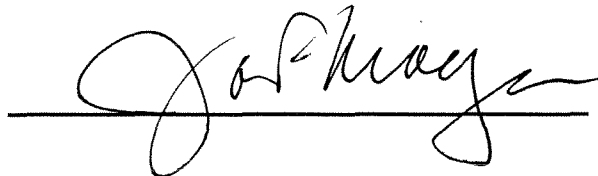
Krysti Clift
NOTARY PUBLIC in and for the State of Idaho
Residing at: Coeur d'Alene
My Commission expires: 11/13/14

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith IV
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155

 U.S. MAIL
 X HAND DELIVERED
 OVERNIGHT MAIL
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664-4125



BR-GOLF CLUB-SKY CANYON-JFM.AFF.wpd

AFFIDAVIT OF JOHN F. MAGNUSON IN
SUPPORT OF DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT - PAGE 7

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1689309

STATE OF IDAHO }
COUNTY OF KOOTENAI } 88
AT THE REQUEST OF
Blackrock Development
JUL 31 11:46 AM '01
DANIEL J. ENGLISH
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Coeur d'Alene
BLACK ROCK

COVENANTS, CONDITIONS AND RESTRICTIONS

EXHIBIT A

0462

1689309

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**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
BLACK ROCK**

The undersigned, Black Rock Development, Inc., an Idaho corporation doing business under the laws of the state of Idaho, (hereinafter referred to as "Declarant"), is the current owner, of the real property located in Kootenai County, Idaho, more particularly described on Exhibit "A", attached hereto (hereinafter referred to as the "Property"). Declarant hereby adopts the following Covenants, Conditions and Restrictions for the Black Rock Planned Unit Development and any additions (hereinafter referred to as the "Project" located at the Property), and declares that the following shall apply to the subject Property and to any interest in that Property. These Covenants, Conditions and Restrictions ("Declaration") shall run with the land, and with each estate therein, and shall be binding upon all persons having or acquiring any right, title or interest in said real property or any Lot, parcel or portion thereof; and shall inure to the benefit of and be binding upon Declarant, Declarant's successors-in-interest, purchasers, assigns, heirs and any party having acquired any right, title or interest in or to any part of the subject Property until the Declaration is terminated.

This Declaration is intended to regulate the Project and use of the Black Rock Planned Unit Development for the mutual benefit of future Owners and occupants. The Project is to be an aesthetically pleasing family oriented residential development. The Declarant has attempted to draft this Declaration consistent with the ordinances and regulations of Kootenai County. In the event the provisions of this Declaration are inconsistent with such ordinances, the more restrictive provision between this Declaration and Kootenai County ordinances and regulations shall apply. THIS DOCUMENT DOES NOT AND CANNOT ALTER THE LAW OF THE GOVERNMENTAL AGENCIES HAVING JURISDICTION.

**ARTICLE 1.
STATEMENT AND PURPOSE AND IMPOSITION OF COVENANTS**

- 1.1. **Ownership.** The Declarant is the owner of the Property in Kootenai County, Idaho, described on Exhibit "A".
- 1.2. **Purpose.** The purpose of the Declarant in making this Declaration is to create a planned unit development known as Black Rock on the Property.

The Declarant further intends to ensure the attractiveness of the Property, including the residences and other improvements constructed on it; to prevent any future impairment of the Property and to guard against the construction on the Property of improvements of improper or unsuitable materials or with

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improper quality or methods of construction; to protect and enhance the values and amenities of the Property; to provide for the operation, administration, use and maintenance of the Common Areas within the Property; to preserve, protect and enhance the values and amenities of the Property; and to promote the health, safety and welfare of the owners of the Property.

1.3. Right to Expand. The Declarant may, in the future, own additional real estate in Kootenai County, Idaho, which it may desire to incorporate into the Black Rock Planned Unit Development (the "Expansion Property"), and the Declarant has reserved the right, but will not be obligated, to incorporate the Expansion Property in whole or in part in the regime established under this Declaration, all as provided in Article 22 below, so that Expansion Property, if and when developed, will be treated as an integral part of the planned unit development of Black Rock.

ARTICLE 2. DEFINITIONS

The following terms, as used in this Declaration, are defined as follows:

2.1. Annexation. The process by which portions of the Expansion Property are made subject to this Declaration pursuant to Article 22 below.

2.2. Annual Assessment. The Assessment levied annually pursuant to Section 14.3.

2.3. Articles or Articles of Incorporation. The Articles of Incorporation of the Black Rock Homeowner's Association, Inc., which have been filed with the Secretary of State of Idaho, as such Articles may be amended from time to time.

2.4. Assessments. Those payments required of Owners or Association Members, including Annual, Special, Utility and Default Assessments levied pursuant to Article 14.

2.5. Black Rock Documents. The basic documents creating and governing Black Rock, including, but not limited to, this Declaration, the Articles of Incorporation and Bylaws, the Design Guidelines, the Black Rock Utilities Articles of Incorporation and Bylaws, any other procedures, rules, regulations or policies adopted under such documents by the Association or Black Rock Utilities, all as may be amended from time to time.

2.6. Black Rock Homeowner's Association. The Black Rock Homeowner's Association, Inc., ("Association"), an Idaho non-profit corporation, and any successor of that entity by whatever name.

2.7. Black Rock Planned Unit Development. The community created by this Declaration ("Community"), consisting of the Property (including any

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Expansion Property, after annexation in accordance with Article 22) and all of the Improvements located on the Property, also referred to herein from time to time as "Project", pursuant to 2.46.

2.8. Black Rock Rules and Regulations. The rules and regulations adopted by the Association from time to time as provided in Article 6.

2.9. Black Rock Utilities. Private water and sewer corporation owned and governed by the Association.

2.10. Black Rock Utilities Board. The Board of Directors of Black Rock Utilities appointed by the Board of Directors of the Association to administer, maintain and enforce the Bylaws and Rules and Regulations of Black Rock Utilities.

2.11. Board of Directors or Board. The Board of Directors of the Association.

2.12. Builder. A Person who purchases a Lot for the purpose of building a Dwelling Unit for resale and not for such Person's primary residence.

2.13. Building. A building or other structure constructed on a Lot.

2.14. Building Envelope. The portion of each Lot within which any Building or other Improvement must be located, except driveways which may be located outside the Building Envelope pursuant to the Design Guidelines and always subject to the prior written approval of the Design Committee.

2.15. Bylaws. The Bylaws of the Association, as such Bylaws may be amended from time to time.

2.16. Club. The Club at Black Rock, L.L.C., an Idaho limited liability company.

2.17. Club Property. Means all of the real property owned by the Club or its successors or assigns plus all of the recreational and social facilities and maintenance facilities constructed thereon, which will be operated by the Club or its successors or assigns and commonly known as The Club at Black Rock, including without limitation, the golf course, the golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and any other recreational facilities offered by the Club. THE CLUB PROPERTY IS NOT COMMON AREA.

2.18. Common Area. Such real property depicted as Common Area on the recorded Final Plat for each phase of the and any other property in which the Association owns an interest for the common non-exclusive use, benefit and enjoyment of some or all of the Members and such other persons as may be permitted to use the Common Area under the terms of this Declaration or any

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contract with the Association. Such interest owned by the Association may include, without limitation, estates in fee, estates for terms of years, or easements.

2.19. Common Expenses. Common Expenses shall include the actual and estimated expenses incurred, or anticipated to be incurred by the Association for the general benefit of all Owners. Common Expenses shall include reasonable reserves as the Board may find necessary and appropriate for deferred maintenance, repairs, replacements and improvements in accordance with the Black Rock Documents as well as: (i) Premiums for insurance carried by the Association under Article 18, (ii) all expenses, costs and amounts of every kind and nature incurred by the Association in administering, servicing, conserving, managing, maintaining, operating, repairing or replacing the Common Area and any improvements located on it; (iii) all expenses expressly declared to be Common Expenses by the Black Rock Documents; (iv) all expenses lawfully determined to be Common Expenses by the Board of Directors; and (v) all expenses to be allocated among the Owners as provided in Article 14.

2.20. Community. The Black Rock Planned Unit Development.

2.21. County of Kootenai. Kootenai County, Idaho.

2.22. Declarant. Black Rock Development, Inc., an Idaho corporation, or its successors or assigns, including any Successor Declarant to the extent the rights of Declarant are assigned to the Successor Declarant, as provided in Section 2.50.

2.23. Declaration of Annexation. A declaration prepared and recorded in accordance with the provisions of Article 22 to incorporate Expansion Property within the Property governed by this Declaration.

2.24. Default Assessment. Any Assessment levied by the Association pursuant to Section 14.5 below.

2.25. Default Rate. An annual rate of interest that is the lesser of (i) five points above the prime rate charged by the Association's then current bank, and (ii) the maximum rate permitted by applicable law.

2.26. Design Guidelines. The guidelines and rules published and amended and supplemented from time to time by the Design Review Committee.

2.27. Design Review Committee. The committee formed pursuant to Article 10 to maintain the quality and architectural harmony of improvements in Black Rock, ("Design Committee").

2.28. Development Rights. Those rights of Declarant as set forth in Section 16.1.2.

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2.29. Director. Member of the Board of Directors of the Association.

2.30. Dwelling Unit. A single-family residence.

2.31. Expansion Property. Such additional real property now owned or in the future acquired by Declarant (including any Successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

2.32. First Mortgage. Any Mortgage which is not subject to any lien or encumbrance except liens for taxes or other liens that are given priority by statute.

2.33. First Mortgagee. The holder of record of a First Mortgage.

2.34. Improvement(s). All Buildings, parking areas, loading areas, fences, walls, hedges, plantings, lighting, poles, driveways, roads, ponds, lakes, trails, gates, signs, changes in any exterior color or shade, excavation and all other site work, including without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. The term "Improvement(s)" does not include turf, shrub, or tree repair or replacement of a magnitude that does not change exterior colors or exterior appearances. The term "Improvement(s)" does include both original improvements and all later changes and improvements.

2.35. Lot. A parcel of land designated as a Lot on any Plat of the Property or of any Expansion Property that the Declarant makes subject to this Declaration. The streets, roads, and Common Areas on any Plat shall not be considered to be separate Lots.

2.36. Maintenance Fund. The fund created by Assessments and fees levied pursuant to Article 14 below to provide the Association with the funds required to carry out its duties under this Declaration.

2.37. Manager. Such person or entity retained by the Board of Directors to perform certain functions of the Board pursuant to this Declaration and/or the Bylaws.

2.38. Final Development Plan. The Final Development Plan of the Community, as approved by the appropriate governmental agencies and the County of Kootenai, as amended and approved during subdivision and final platting process.

2.39. Member. Any person or entity holding membership in the Association.

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2.40. Mortgage. Any mortgage, deed of trust, trust indenture, contract for deed, or other document which is recorded in the office of the Recorder of Kootenai County, and, which encumbers any portion of the Property or Interest therein as security for the payment of a debt or obligation.

2.41. Mortgagee. Any person named as a beneficiary or mortgagee under a Mortgage, or any successor to the interest of any such person under such Mortgage. In the case of a contract for deed, the seller shall be considered the "Mortgagee" for purposes of this Declaration.

2.42. Owner. The person or other legal entity, including Declarant, that holds fee simple title of record to any Lot or, If the Lot is subject to one or more contracts for deed, the buyer under the most recent contract for deed, provided, however, that if the seller under such contract notifies the Association in writing that the buyer under said contract is in default, then the seller under such contract shall be the Owner for purposes of this Declaration. The Association shall be entitled to rely on such notification without further inquiry. "Owner" does not mean or refer to any person or entity who holds such interest merely as security for the performance of a debt or other obligation, including a Mortgage, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or other proceedings.

2.43. Period of Declarant Control. The period beginning on the date this Declaration is first recorded in the office of the Recorder of Kootenai County, Idaho, and ending on the earlier of: (a) the date which is 20 years later, or (b) the date on which the Declarant has recorded the plats of all Expansion Property and sold 90% of the Lots to Owners other than Declarant or Builder in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Association in writing. The period of Declarant Control may be reinstated or extended by agreement between Declarant and the Association, subject to such terms, conditions and limitations as the Board of Directors may impose on the subsequent exercise by Declarant of the Special Declarant Rights. After the termination of the Period of Declarant Control, Declarant, if still an Owner, will continue to have all the rights and duties ordinarily given to Members and/or Owners under this Declaration.

2.44. Person. Whether or not in capitalized form, Person means a natural person, a corporation, a partnership, a limited liability company, an association, a trust or any other entity or combination of the foregoing.

2.45. Plat. Any engineering survey or surveys of all or part of the Property (including Expansion Property), together with such other diagrammatic plans and information regarding the Property as may be required by applicable law, or as may be included in the discretion of Declarant, as each such survey may be amended and supplemented from time to time, and all as recorded in the office of the Recorder of Kootenai County, Idaho.

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2.46. Project. Community and any additions, pursuant to 2.7, of this Declaration.

2.47. Property. Includes the property described on Exhibit "A" and initially subjected to this Declaration, and also refers to any Expansion Property that may be incorporated in the Project from time to time and made subject to these Covenants pursuant to the provisions of this Declaration.

2.48. Special Assessment. An Assessment levied pursuant to Section 14.4.

2.49. Special Declarant Rights. Those rights of Declarant as set forth in Section 16.1 below.

2.50. Successor Declarant. Any party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 27.7 and evidenced by an assignment or deed of record in the office of the Recorder of Kootenai County, Idaho, designating such party as a Successor Declarant, signed by the transferor and the transferee. Upon such recording, Declarant's rights and obligations under the Declaration will cease and terminate to the extent provided in such document, and all such rights and obligations shall be transferred to and assumed by the Successor Declarant to the extent provided in such document.

2.51. Supplemental Declaration. Any Supplemental Declaration including additional or further covenants, conditions and restrictions that might be adopted from time to time with respect to any portion of the Property or Expansion Property or Improvements that may be made part of the Property as provided herein.

ARTICLE 3.

BLACK ROCK PLANNED UNIT DEVELOPMENT

3.1. Establishment of Planned Unit Development. By this Declaration, Black Rock is established as a planned unit development, subject to the Reservation of Right to Expand as set forth in Article 22 below.

3.2. Declaration of Lot Boundaries. The boundaries of each Lot are delineated on the Plat, and each Lot is identified by the number or address noted on the Plat.

3.3. Plat. The Plat will be filed for record in the office of the Recorder of Kootenai County, Idaho. The Plat may be filed as a whole or as a series of Plats from time to time. Any Plat filed subsequent to the first Plat will be termed a supplement to the Plat, and the numerical sequence of each supplement will be shown on it.

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**ARTICLE 4.
BLACK ROCK HOMEOWNER'S ASSOCIATION ORGANIZATION**

4.1. Organization of the Black Rock Homeowner's Association.

The Black Rock Homeowner's Association, Inc. shall be initially organized by Declarant as an Idaho non-profit corporation under the provisions of the Idaho Code and shall be charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, the Design Guidelines and this Declaration. Neither the Articles, Bylaws nor Design Guidelines shall be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration or with any Supplemental Declaration that Developer might adopt pertaining to Black Rock.

4.2 Board of Directors and Officers. Subject to the rights and obligations of Declarant as set forth in this Declaration and to the rights and obligations of the other Owners, the Association will be responsible for the administration and operation of the Property. The Board of Directors will exercise all powers, duties and authority of the Association not reserved to Declarant or the Members by this Declaration, the other Black Rock Documents, or other applicable law.

4.3. Appointment of Officers and Directors by Declarant/Club. Until the expiration of the Period of Declarant Control, Declarant will retain the exclusive powers to appoint, remove and replace Directors and officers of the Association.

Notwithstanding the foregoing, Declarant may voluntarily surrender the right to appoint, remove and replace Directors and officers of the Association before the end of the Period of Declarant Control by providing a notice to that effect to the Association and otherwise complying with the procedures for termination of this Special Declarant Right, as set forth in the Bylaws. However, upon voluntarily terminating this Special Declarant Right in advance of the expiration of the Period of Declarant Control, Declarant may require that specified actions of the Association or the Board, as described in an instrument executed and recorded by Declarant in the office of the Recorder of Kootenai County, Idaho, be approved by Declarant before those actions become effective.

After the expiration of the Period of Declarant Control or Declarant's voluntary surrender of the right to appoint, remove and replace Directors of the Association, the Club shall always retain the right to appoint, remove and replace one Director of the Association.

4.4. Manager. The Association may employ or contract for the services of a Manager to act for the Association and the Board and the officers according to the powers and duties delegated to the Manager pursuant to the Bylaws or resolution of the Board. Neither the Board nor any officer of the

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Association will be liable for any omission or improper exercise by a Manager of any such duty, power, or function so delegated by written instrument executed by or on behalf of the Board. The Manager may be the Declarant or a person related to Declarant.

4.5. Committees. The Association may delegate any of its rights, duties or responsibilities to any committee or other entity (in addition to the Design Committee and the Black Rock Utilities Board) that the Board may choose to form.

4.5.1. Limitation. Any delegation by the Board under this Section is subject to compliance with the Bylaws and the requirements that the Board, when so delegating, will not be relieved of its responsibilities under the Black Rock Documents.

ARTICLE 5. ASSOCIATION MEMBERSHIP

5.1. Membership. Every Owner, by virtue of being an Owner, and for so long as he is an Owner, will be a Member of the Association. Membership will be appurtenant to and may not be separated from ownership of any Lot. No Owner, whether one or more persons, will have more than one membership per Lot owned, but all of the persons owning each Lot will be entitled to rights of membership and of use and enjoyment appurtenant to such ownership. The owner of the Club Property shall be considered an Owner and shall be a Member of the Association with all of the same privileges and duties of the other Owners and Members, except that the owner of the Club Property shall be entitled to ten (10) votes in the Association and, for the purpose of assessments, the Club Property shall be treated as ten (10) Lots and shall pay assessments accordingly.

5.2. Classes of Membership. The Association will initially have three classes of Members as described below.

5.2.1 Class A Members. Owners of Lots, other than the Owner of the Club Property and the Declarant, shall be known as Class A Members. Each Class A Member shall be entitled to cast one (1) vote for each Lot owned by such Class A Member on the date of the vote.

5.2.2 Class B Members. The Owner of the Club Property shall be known as a Class B Member and shall be entitled to cast ten (10) votes.

5.2.3. Class C Members. The Declarant shall be known as a Class C Member and shall be entitled to cast ten (10) votes per Lot owned, by Declarant on the date of the vote. Provided, however, that Class C Membership shall cease to exist after the termination of the Period of Declarant Control, and at such time, Declarant, if still an Owner of a Lot or Lots, will become a Class A Member and shall be entitled to one (1) vote for each Lot owned.

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The Bylaws may set forth additional classifications of membership from time to time, except no additional classifications shall be created during the Period of Declarant Control unless the Declarant agrees in writing to any new or different class.

5.3. Voting Rights. Each Member will be entitled to vote on Association matters based on the number of votes to which that Member is entitled based on such Member's membership class.

When more than one person holds an interest in any Lot, all such persons shall be Members but shall share the vote attributable to the Lot. Fractional votes, however, shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote shall be cast, they shall lose their right to vote on the matter being put to a vote. When an Owner casts a vote, it will thereafter be presumed conclusively for all purposes that such Owner was acting with authority and consent of all joint Owners of the Lot from which the vote derived. The right to vote may not be severed or separated from the ownership of the Lot to which it is appurtenant, except that any Owner may give a revocable proxy.

Any Owner of a Lot that is leased may assign his voting right to the tenant, provided that a copy of the instrument of assignment is furnished to the Secretary of the Association prior to any meeting at which the tenant exercises the voting right.

5.4. Transfer of Membership. An Owner may not transfer, pledge, assign or alienate its membership in the Association in any way except upon the transfer of its title in its respective Lot, and then only to the transferee of such title. If the transfer is pursuant to a contract for deed, Owner's membership shall transfer to the buyer under said contract subject to the provisions of Section 5.4 herein.

5.5. Notice of Membership. Any person, on becoming a Member, will furnish the Secretary of the Association with a photocopy or certified copy of the recorded instrument or such other evidence as may be specified by the Board under the Bylaws, vesting the person with the interest required to make him a Member.

5.6. Owner's and Association's Addresses for Notices. At the same time that the Member provides Notice of Membership as set forth in the paragraph 5.5, the Member will provide the Association with the single name and address which shall be deemed the registered address for that Membership and for the Owners associated therewith. The registered address shall be the address to which any notices given pursuant to the Black Rock Documents shall be sent. The Member shall state the number of Lots owned by the new Member. In the event of any change in the facts reported in the original written notice, including any change of ownership, the Member will give a new written notice to

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the Association containing all of the information required to be provided in the original notice. The Association will keep and preserve the most recent written notice received by the Association with respect to each Member.

If no address is provided to the Association, or if all of the Owners cannot agree on a single address, then the address of the Lot will be deemed the registered address until another registered address is furnished as required under this Section 5.5.

If the address of the Lot is the registered address of the Owners, then any notice will be deemed duly given if delivered to any person occupying the Lot or sent to the Lot by any other means specified for a particular notice in any of the Black Rock Documents, or if the Lot is unoccupied, if the notice is held and available for the Owners at the principal office of the Association.

All notices and demands intended to be served upon the Board of Directors will be sent to the addresses of the Association or such other address as the Board may designate from time to time by a notice delivered to all Owners in accordance with this Section.

All notices given under this Declaration will be sent by personal delivery, which will be effective upon receipt; by overnight courier service, which will be effective one business day following timely deposit with a courier service; or by regular, registered or certified mail, postage prepaid, which will be effective three days after deposit in the U.S. Mail.

ARTICLE 6. POWERS AND DUTIES OF THE ASSOCIATION

6.1. **Powers.** The Association shall have the powers of a corporation organized under the corporation laws of the State of Idaho applicable to non-profit corporations, subject only to such limitations upon the exercise of such powers as are expressly set forth in the Articles, the Bylaws, and this Declaration. The Association shall have the power to do any and all lawful things which may be authorized, required or permitted to be done by the Association under Idaho law and under this Declaration, and the Articles and Bylaws, and to do and perform any and all acts which may be necessary to, proper for, or incidental to the proper management and operation of the Common Area and the Associations' other assets, and the affairs and the performance of the other responsibilities herein assigned, including without limitation:

6.1.1. **Assessments.** The power to levy Assessments on any Owner or any portion of the Property and to force payment of such Assessments, all in accordance with the provisions of this Declaration.

6.1.2. **Right of Enforcement.** The power and authority from time to time in its own name, on its own behalf, or on behalf of any Owner who consents thereto, to commence and maintain actions and suits to restrain

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and enjoin any breach or threatened breach of this Declaration or the Articles or the Bylaws, including the Association Rules, if any, adopted pursuant to this Declaration, and to enforce by injunction or otherwise, all provisions hereof.

6.1.3. Association Rules. The power to adopt, amend and repeal by majority vote of the Board such rules and regulations as the Association deems reasonable. The Association may govern the use of the Common Areas by the Owners, their families, invitees, licensees, lessees or contract purchasers; provided, however, that any Association Rules shall apply equally to all Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Owner. Upon such mailing or delivery, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration. In the event of any conflict between such Association Rules and any other provisions of this Declaration, or other Articles or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Declaration, the Articles or the Bylaws to the extent of any such inconsistency.

6.1.4. Emergency Powers. The power, exercised by the Association or by any person authorized by it, to enter upon any property (but not inside any building constructed thereon) in the event of any emergency involving illness or potential danger to life or property or when necessary in connection with any maintenance or construction for which the Association is responsible. Such entry shall be made with as little inconvenience to the Owner as practicable, and any damage caused thereby shall be repaired by the Association.

6.1.5. Licenses, Easements and Rights-of-Way. The power to grant and convey to any third party such licenses, easements and rights-of-way in, on or under the Common Area as may be necessary or appropriate for the orderly maintenance, preservation and enjoyment of the Common Area, and for the preservation of the health, safety, convenience and the welfare of the Owner, for the purpose of constructing, erecting, operating or maintaining:

6.1.5.1. Underground lines, cables, wires, conduits or other devices for the transmission of electricity or electronic signals for lighting, heating, power, telephone, television, security and communication, or other purposes, and the above ground lighting stanchions, meters, and other facilities associated with the provisions of lighting and services; and

6.1.5.2. Sewers, storm drains, underground irrigation pipes, water drains and pipes, water supply systems, sprinkling systems,

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heating and gas lines or pipes, and any similar public or quasi-public improvements or facilities.

6.1.5.3. Mailboxes and sidewalk abutments around such mailboxes or any service facility, berm, fencing and landscaping abutting Common Areas, public and private streets or land conveyed for any public or quasi-public purpose including, but not limited to, bicycle pathways.

The right to grant such licenses, easements and rights-of-way are hereby expressly reserved to the Association.

6.2. **Implied Rights and Obligations.** The Association will perform all of the duties and obligations imposed on it expressly by the Black Rock Documents, together with every other duty or obligation reasonably to be implied from the express provisions of the Black Rock Documents or reasonably necessary to satisfy any such duty or obligation. The Association may exercise any other right or privilege (i) given to it expressly by the Black Rock Documents, (ii) reasonably to be implied from the existence of another right or privilege given expressly by the Black Rock Documents, (iii) reasonably necessary to effectuate any such right or privilege.

ARTICLE 7. COMMON AREAS

7.1. **Association's Responsibility for Common Area.** The Association, subject to the rights and obligations of the Owners set forth in this Declaration, will be responsible for the management and control of the Common Area and all improvements on the Common Area (including furnishings and equipment related thereto), and will keep it in good, clean and attractive condition and repair consistent with the standards of Community.

7.2. **Conveyance by Declarant.** On or before the date on which Declarant conveys any Lot to another party, Declarant will convey to the Association, by written instrument recorded with the Recorder of Kootenai County, Idaho, the Common Areas more fully described on the attached Exhibit "B", including any improvements located on and the rights and easements appurtenant to such property. From time to time before the expiration of the Period of Declarant Control, Declarant may, but will not be obligated to, convey to the Association, by written instrument recorded with the Recorder of Kootenai County, Idaho, other parts of the Property (including the Expansion Property) as Common Area.

7.3. **Use of Common Area.** The Common Area generally is designated by this Declaration for the common use, benefit and enjoyment of the Owners and their families, tenants, employees, guests and invitees, and such other persons as may be permitted to use the Common Area by agreement established under Sections 7.2. or 7.7. below.

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7.4 No Dedication to the Public. Nothing in this Declaration or the other Black Rock Documents will be construed as a dedication to public use, or a grant to any public municipal or quasi-municipal authority or utility, or an assumption of responsibility for the maintenance of any Common Area by such authority or utility, absent an express written agreement to that effect.

7.5. Declarant's Right to Perform for the Account of the Association. In the event the Association does not repair or maintain the Common Area, Declarant will have the right, but not the obligation, to perform such duties for the Association. In that event, Declarant will be entitled to reimbursement from the Association of all costs incurred by Declarant, such reimbursement being due within 30 days after the receipt by the Association of an invoice from Declarant, itemizing the costs incurred. After expiration of the 30-day period allowed for payment, interest shall accrue on such amount at the Default Rate.

7.6. Declarant's Agreements Regarding Common Area. Upon the transfer by Declarant to the Association of any Common Area as provided in this Declaration, Declarant may require as part of the terms of the transfer that the Association contract with organizations operating within or in the vicinity of Community, to allow use of all or part of the Common Area under such terms and for such charges as may be acceptable to Declarant and such association or other organizations.

7.7. Association's Agreements Regarding Common Area. The Association, acting through the Board of Directors, may grant easements, rights-of-way, leases, licenses and concessions through or over the Common Area without the independent approval of the Owners. Without limiting the generality of the foregoing, the Association may grant such rights to suppliers of utilities serving the Project or property adjacent to the Project, and to developers or owners of property adjacent to the Project for the purpose of accommodating minor encroachments onto the Common Area or other purposes that do not unreasonably interfere with the use and enjoyment of the Common Area by Owners.

7.8: Ownership of Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire, hold and dispose of personal property and real property. The Board, acting on behalf of the Association, will accept any real or personal property, leasehold or other property interests within Community and conveyed to the Association by Declarant.

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**ARTICLE 8.
PRIVATE ROADS AND STREETS**

8.1. **Roads and Streets.** The Association shall own and be responsible for maintaining all roads within the Property, (except private driveways located within Lots on the Property, which shall be the responsibility of the Owner of the Lot). Such maintenance will include repair and replacement of such roads, as well as periodic maintenance of the surface and regular snow, ice, and trash removal from all drive areas (except private driveways located within Lots on the Property). The Association shall be responsible for maintaining all emergency egress roads with adequate snow removal to ensure safe, two-way circulation year round. The Board will cooperate with the applicable traffic and fire control officials to post roads and streets with traffic control, fire lane, and parking regulation signs. The Association shall also be responsible for maintaining all trails within the Property.

8.2. **Conveyance by Declarant.** The roads within the Property, except private driveways located within Lots on the Property, are considered to be Common Areas. The Declarant shall convey such roads along with the other Common Areas as set forth in Section 7.2. herein.

**ARTICLE 9.
BOOKS, RECORDS AND RESERVE ACCOUNTS**

9.1. **Books and Records.** The Association will make available for inspection by Owners and Mortgagees, upon request, during normal business hours or under other reasonable circumstances, current copies of the Black Rock Documents, and the books, records and financial statements of the Association prepared pursuant to the Bylaws. The Association may charge a reasonable fee for copying such materials.

9.2. **Reserve Account.** The Association will establish and maintain an adequate reserve fund from Annual Assessments levied pursuant to Section 14.3 below for maintenance, repair or replacement of the Common Area and improvements located with the Common Area that must be replaced on a periodic basis and for any other facilities made available to the Association that must be replaced on a periodic basis with contribution from the Association.

9.3. **Working Capital Account.** In order to provide the Association with adequate working capital funds, the Association will collect at the time of the close of escrow of each Lot an amount equal to three months' installments of the Annual Assessments at the rate in effect at the time of the close of such escrow. The Association will maintain such funds in a segregated account to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Payments to this fund from escrow closings are not and shall not be considered advance payments of Annual Assessments.

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ARTICLE 10.
DESIGN REVIEW COMMITTEE

10.1. Design Review Committee and Guidelines. There is hereby established a Design Review Committee, ("Design Committee") which will be responsible for the establishment and administration of Design Guidelines to facilitate the purposes and intent of this Declaration. The Design Committee may amend, repeal and augment the Design Guidelines from time to time, in the Design Committee's sole discretion. The Design Guidelines as amended from time to time will be binding on all Owners and other persons governed by this Declaration.

The Design Guidelines may include, among other things, those restrictions and limitations set forth below:

10.1.1. Procedures for making application to the Design Committee for design review and approval, including the documents to be submitted and the time limits within which the Design Committee must act to approve or disapprove any submission.

10.1.2. Time limitations for the completion, within specified periods after approval, of the improvements for which approval is required under the Design Guidelines.

10.1.3. Designation of the Building Envelope on a Lot, establishing the maximum developable area of the Lot.

10.1.4. Minimum and maximum square foot areas of living space that may be constructed on any Lot.

10.1.5. Landscaping regulations, with limitations and restrictions prohibiting the removal of existing trees, or requiring the replacement of existing trees, the use of plants indigenous to the locale, and other practices benefiting the protection of the environment, aesthetics and architectural harmony of the Association.

10.1.6. General instructions for the construction, reconstruction, refinishing or alteration of any improvement, including any plan to excavate, fill or make any other temporary or permanent change in the natural or existing surface contour or drainage or any installation of utility lines or conduits on the Property, addressing matters such as loading areas, waste storage, trash removal, equipment and materials storage, grading, transformers and meters.

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10.1.7. Consideration of whether the proposed Improvement adjacent to the Club Property will have an adverse effect on the Club Property, whether by restriction of view, hazards to persons or otherwise.

10.2. Committee Membership. The Design Committee will be composed of up to five (5) persons. The Design Committee need not include any Member of the Association. All of the members of the Design Committee will be appointed, removed, and replaced by Declarant, in its sole discretion, until the expiration of the Period of Declarant Control or such earlier time as Declarant may elect to voluntarily waive this right by notice to the Association, and at that time the Board of Directors will succeed to Declarant's right to appoint, remove, or replace the members of the Design Committee.

10.3. Purpose and General Authority. The Design Committee will review, study and either approve or reject proposed Improvements on the Property, all in compliance with this Declaration and as further set forth in the Design Guidelines and such rules and regulations as the Design Committee may establish from time to time to govern its proceedings. No Improvement will be erected, placed, reconstructed, replaced, repaired or otherwise altered, nor will any construction, repair or reconstruction be commenced until plans for the Improvements shall have been approved by the Design Committee; provided, however, that Improvements that are completely within a Building may be undertaken without such approval. All Improvements will be constructed only in accordance with approved plans. This Article shall not apply to Declarant's activities or activities of the Association prior to termination of the Period of Declarant Control.

10.3.1. Design Committee Discretion. The Design Committee will exercise its best judgment to see that all Improvements conform and harmonize with any existing structures as to external design, quality and type of construction, seals, materials, color, location on the Building Envelope, height, grade and finished ground elevation, and the schemes and aesthetic considerations set forth in the Design Guidelines and the other Black Rock Documents. The Design Committee, in its sole discretion, may excuse compliance with such requirements as are not necessary or appropriate in specific situations and may permit compliance with different or alternative requirements.

10.3.2. Binding Effect. The actions of the Design Committee in the exercise of its discretion by its approval or disapproval of plans and other information submitted to it, or with respect to any other matter before it, will be conclusive and binding on all interested parties.

10.3.3. No Waiver of Future Approvals. Each Owner acknowledges that the Persons reviewing proposed Improvements pursuant to this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges

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that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Design Committee may refuse to approve similar proposals in the future. Approval of applications or plans shall not be deemed to be a waiver of the right to withhold approval as to any similar applications or plans subsequently or additionally submitted for approval.

10.4. Organization and Operation of Committee.

10.4.1. Term. The term of office of each member of the Design Committee, subject to Section 10.2., will be one year, commencing January 1 of each year, and continuing until his or her successor has been appointed. Should a Design Committee member die, retire or become incapacitated, or in the event of resignation, removal or temporary absence of a member, a successor may be appointed as provided in Section 10.2.

10.4.2. Chairperson. So long as Declarant appoints the Design Committee, Declarant will appoint the chairperson. At such time as the Design Committee is appointed by the Board of Directors, the chairperson will be elected annually from among the members of the Design Committee by a majority vote of the members. In the absence of a chairperson, the party responsible for appointing or electing the chairperson may appoint or elect a successor, or if the absence is temporary, an interim chairperson.

10.4.3. Operations. The Design Committee chairperson will take charge of and conduct all meetings and will provide for reasonable notice to each member of the Design Committee prior to any meeting. The notice will set forth the time and place of the meeting, and notice may be waived by any member.

10.4.4. Voting. The affirmative vote of a majority of the members of the Design Committee will govern its actions and be the act of the Design Committee.

10.4.5. Expert Consultation. The Design Committee may avail itself of other technical and professional advice and consultants as it deems appropriate, and the Committee may delegate its plan review responsibilities, except final review and approval, to one or more of its members or to consultants retained by the Design Committee. Upon the delegation, the approval or disapproval of plans and specifications by such member or consultant, excluding final review and approval, will be equivalent to approval or disapproval by the entire Committee.

10.4.6. Improvements Adjacent to the Club Property. The Club shall be given notice of all meetings of the Design Committee wherein the

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construction or improvement under consideration (or any portion thereof) is contiguous to or in the direct line of sight of the Club Property. If, in the reasonable opinion of the Club, the construction or modification being reviewed has a material adverse impact on the Club Property whether by restriction of view, hazards to person or otherwise, then, in that event, the Club may disapprove the proposed construction irrespective of the approval of same by the Design Committee. The Design Committee shall notify the Owner in writing of the objection of the Club, and the Owner shall resubmit to the Design Committee the proposed construction or modification so as to take into account the objection of the Club.

10.5. Expenses. Except as provided in this Section below, all expenses of the Design Committee will be paid by the Association and will constitute a Common Expense. The Design Committee will have the right to charge a fee for each application submitted to it for review, in an amount to be established by the Design Committee from time to time, and such fees will be collected by the Design Committee and remitted to the Association to help defray the expenses of the Design Committee's operation. In the event the Design Committee engages outside consultants or other professionals to review submissions, in accordance with Section 10.4.5., the cost of such engagement shall be borne by the person or entity making the submission or request.

10.6. Other Requirements. Compliance with the Association design review process is not a substitute for compliance with the County of Kootenai building, planning, zoning and subdivision regulations, and each Owner is responsible for obtaining all approvals, licenses, and permits as may be required prior to commencing construction.

Further, the establishment of the Design Committee and procedures for architectural review will not be construed as changing any rights or restrictions upon Owners to maintain and repair their Lots and Improvements as otherwise required under the Black Rock Documents.

10.7. Limitation of Liability. The Design Committee will use its own judgment in accepting or disapproving all plans and specifications submitted to it. Neither the Design Committee nor any individual Design Committee member will be liable to any person for any official act of the Committee in connection with submitted plans and specifications, except to the extent the Design Committee or any individual Design Committee member acted with malice or harmful intent. Approval by the Design Committee does not necessarily assure approval by the appropriate governmental board or commission for the County of Kootenai. Notwithstanding the Design Committee's approval of plans and specifications, neither the Design Committee nor any of its members will be responsible or liable to any Owner, developer or contractor with respect to any loss, liability, claim or expense which may arise by reason of such approval of the construction of the improvements. Neither the Board, the Design Committee, nor any agent thereof, nor Declarant, nor any of its partners, employees, agents or consultants will be responsible in any way for any defects in any plans or specifications submitted,

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revised or approved in accordance with the provisions of the Black Rock Documents, nor for any structural or other defects in any work done according to such plans and specifications. In all events the Design Committee will be defended and indemnified by the Association in any such suit or proceeding that may arise by reason of the Design Committee's review or decision. The Association, however, will not be obligated to indemnify each member of the Design Committee to the extent any such member of the Design Committee is adjudged to be liable for negligence or misconduct in the performance of his or her duty as a member of the Design Committee, unless and then only to the extent that the court in which such action or suit may be brought determines upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnification for such expense as such court shall deem proper.

10.8. Enforcement.

10.8.1. Inspection. Any member or authorized consultant of the Design Committee, or any authorized officer, Director, employee or agent of the Association may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, in order to inspect improvements constructed or under construction on the Lot to determine whether the improvements have been or are being built in compliance with the Black Rock Documents and the plans and specifications approved by the Design Committee.

10.8.2. Completion of Construction. Before any improvements on a Lot may be occupied, the Owner of a Lot will be required to obtain a temporary certificate of occupancy issued by the Design Committee indicating substantial completion of the improvements in accordance with the plans and specifications approved by the Design Committee, and imposing such conditions for issuance of a final certificate of occupancy as the Design Committee may determine appropriate in its reasonable discretion. Without limiting the generality of the preceding sentence, the Design Committee may require, as a condition to the issuance of the temporary certificate of occupancy, that the Owner deposit with the Design Committee such sums as may be necessary to complete the landscaping on the Lot by a specified date. If the landscaping is not completed as scheduled, the Design Committee may apply the deposit to cover the cost of completing the work and enforce such other remedies as are available to the Association for the failure of the Owner to comply with this Declaration, including without limitation the remedies set forth in Section 10.9. The certificates of occupancy referenced herein shall be issued solely based on compliance with the Design Guidelines as approved by the Design Committee and shall not be construed as evidencing any assessment of the safety or habitability of the improvements.

10.8.3. Estoppel Certificate. Upon payment of a reasonable fee established from time to time by the Design Committee, and upon written

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request of any Owner or his agent, an existing or prospective Mortgagee, or a prospective grantee, the Design Committee will issue an Estoppel Certificate as fully set forth in the Design Guidelines.

10.8.4. **Deemed Nuisances.** Every violation of this Declaration is hereby declared to be and to constitute a nuisance, and every public or private remedy allowed for such violation by law or equity against a Member will be applicable. Without limiting the generality of the foregoing, this Declaration may be enforced, without limitation, as provided below.

(I) **Fines for Violations.** The Design Committee may adopt a schedule of fines for failure to abide by the Design Committee rules and the Design Guidelines, including fines for failure to obtain any required approval from the Committee.

(II) **Removal of Nonconforming Improvements.** The Association, upon written request of the Design Committee and after reasonable notice to the offender and, if different, to the Owner, may enter upon any Lot at any reasonable time after notice to the Owner, without being deemed guilty of trespass, and remove any improvement constructed, reconstructed, refinished, altered, or maintained in violation of this Declaration. The Owner of the improvement will immediately reimburse the Association for all expenses incurred in connection with such removal. If the Owner fails to reimburse the Association within 30 days after the Association gives the Owner notice of the expenses, the sum owed to the Association will bear interest at the Default Rate from the date the expense was incurred by the Association through the date of reimbursement in full, and all such sums and interest will be a Default Assessment enforceable as provided in Article 14.

10.9. **Continuity of Construction.** All improvements commenced on the Property will be prosecuted diligently to completion and will be completed within 12 months after commencement, unless an exception is granted in writing by the Design Committee. If an improvement is commenced and construction is then abandoned for more than 90 days, or if construction is not completed within the required 12 month period, then after notice and opportunity for hearing as provided in the Bylaws, the Association may impose a fine of not less than \$100.00 per day (or such other reasonable amount as the Association may set from time to time) to be charged against the Owner of the Lot until construction is resumed, or the improvement is completed, as applicable, unless the Owner can prove to the satisfaction of the Board of Directors that such abandonment is for circumstances beyond the Owner's control. Such charges will be a Default Assessment and lien as provided in Article 14.

10.10. **Reconstruction of Common Area.** The reconstruction by the Association after destruction by casualty or otherwise of any Common Area that is accomplished in substantial compliance with "as built" plans for such Common

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Area will not require compliance with the provisions of this Article or the Design Guidelines.

**ARTICLE 11.
WATER AND SANITARY SEWER**

11.1. **Black Rock Utilities, Inc.** Water and sewer services will be provided to Community by Black Rock Utilities, Inc. ("Black Rock Utilities"), a non-profit corporation established for the sole purpose of owning, operating and maintaining a private water and sewer system for the exclusive use of residents of Community and the Club.

11.1.1 **Ownership/Membership.** Black Rock Utilities is a non-profit, non-stock corporation in which the Association will be the sole member. When the portion of the water system required to serve the lots in the first platted phase of Black Rock is completed, all water permits held by Declarant and all completed water facilities constructed by the Declarant necessary to serve the first phase Lots will be deeded to Black Rock Utilities, including all wells, well houses and related piping, meters, and water distribution lines with water service stubs to each Lot. Future portions of the water system will also be deeded to Black Rock Utilities upon completion of each such portion.

11.1.2. **Governance.** The Association through its Board of Directors shall appoint a Board of Directors for Black Rock Utilities ("Black Rock Utilities Board"), which will be responsible for the administration and maintenance of Black Rock Utilities and for the establishment, amendment and enforcement of all bylaws and rules and regulations of Black Rock Utilities, as amended from time to time, regarding the water and sewer system.

11.2. **Fees.** Each Owner shall pay fees and usage charges on a regular basis at rates and at times to be established by Black Rock Utilities from time to time. Such fees and usage charges are intended to cover all anticipated annual operating expenses of the system as well as to provide a reasonable reserve for repair and replacement.

11.3. **Utilities Rules and Regulations.** Black Rock Utilities shall be governed by the Bylaws and Utilities Rules and Regulations as adopted by Black Rock Utilities. Any amendment to such Bylaws and Rules and Regulations must be adopted by resolution approved as set forth in such governing documents and distributed or made available to each Owner within a reasonable time following the effective date of the amendment.

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11.4. Sanitary Sewer -- Initial Construction.

11.4.1. Sewer Service to Lots. Each Lot shall be provided sewer service by Black Rock Utilities. No wells or drainfields will be allowed on any Lot, except for the Beach Front Sales Office which may be served by a drainfield, and the Club maintenance building, which may be served by a temporary drainfield, until such time as the Black Rock Utilities sewer system is usable, at which time the Club maintenance building will be connected to the Black Rock Utilities water and sewer system, and the drainfield will be abandoned.

11.4.2. Ownership and Construction. Declarant shall be responsible for the initial construction of the sewer mains, the shutoff valve located at or near the property line of each Lot, and the service line running between the sewer main and the shutoff valve. Sewer facilities located on each Lot will not be constructed until the Owner is ready to build a dwelling unit on the Lot. The Owner shall be responsible for determining the location of the septic tank on the Lot; provided, however, that Black Rock Utilities shall approve of the determined location. Black Rock Utilities shall be responsible for the completion of the initial construction of all sewer facilities located on the Owner's Lot, including but not limited to, a septic tank for holding effluent to be pumped into the Black Rock Utilities sewer main, the service line running from the septic tank to the shutoff valve located at or near the property line, and the pump and pumping system and appurtenances needed to pump the sewage from the septic tank to the sewer main and any control and alarm panels, wiring and electrical connections relating to the pumping system. If a pumping system is required, Black Rock Utilities shall install a pumping system that is in compliance with applicable requirements of the Department of Environmental Quality, and the County of Kootenai. The cost of all such construction of sewer facilities on any Lot by Black Rock Utilities shall be borne solely by the Owner. In addition, the Owner shall be responsible for construction of the service line running from the house to the septic tank.

11.4.3. Sanitary Sewer -- Ongoing Maintenance. Upon completion of each phase of sanitary sewer construction, the sewer mains and shut off valves will be conveyed to, owned, operated, repaired, maintained and/or replaced by Black Rock Utilities. Black Rock Utilities shall also own, operate, repair, maintain and/or replace all sewer facilities on each Lot from the septic tank to the shut off valves. Replacement of any such equipment on any Lot shall be at the sole expense of the Owner. Each Owner shall be responsible for the operation, repair, maintenance and replacement of the service line running from the house to the septic tank on such Owner's Lot. Each Owner shall install, operate, repair, maintain and replace the sewer facilities for which that Owner is

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responsible in such a manner as to cause no injury to other property or the overall sewer system. Each Owner shall be in compliance with any ordinances, rules and regulations adopted by the Black Rock Utilities Board concerning the sewer system.

11.4.4. Sanitary Sewer – Fees. Upon completion of the sewer improvements in accordance with the regulations of the Department of Environmental Quality and Kootenai County, each Owner shall pay directly to Black Rock Utilities such amounts for sanitary sewer service, including monthly charges, and all other fees and charges as may be set from time to time by the Black Rock Utilities Board relating to sanitary sewer service.

11.5. Water Service – Initial Construction. Each Lot shall be served by a water system provided by Black Rock Utilities. Declarant shall be responsible for the initial construction of the water mains, the shutoff valve (curb stop) located at or near the property line of each Lot, and the service line running between the water main and the water meter. Black Rock Utilities shall be responsible for the installation of two water meters on each Lot, one for potable water and one for irrigation water. The Owner shall be responsible for the cost of the meters and the installation. The Owner shall also be responsible for the initial construction of all water facilities located on that Owner's Lot, including but not limited to the service line running from the house to the water meter located at or near the property line, and, if required, the individual pressure reducing valve and appurtenant shutoff valves, pipes and fittings. If a pressure reducing valve is required in order to reduce the water pressure to a maximum of 80 pounds per square inch, the Owner shall furnish and install the valve so that it has an external (outside the house) point of discharge. Internal (inside the house) points of discharge are not permitted for pressure-reducing valves, and neither Declarant, nor the Association, nor Black Rock Utilities shall be responsible for any damages that may occur from malfunctioning or improperly designed or installed pressure-reducing valves.

11.5.1. Potable Water. Potable water is defined as water that is reasonably necessary to support a single-family residence, such as drinking water and water for cooking, bathing, laundry and sanitary uses.

11.5.2. Potable Water Service – Ongoing Maintenance. As set forth in Section 11.1.1, the water mains for potable water service, the water meters for such service, and the service line running between the water main and the water meters will be conveyed to, owned by, and subject to the control of the Black Rock Utilities. Black Rock Utilities will also be responsible for the replacement, repair and maintenance of the water meter for potable water on each Lot. The cost of any such replacement, repair or maintenance, however, shall be the responsibility of the Owner. Each Owner shall also be responsible for the operation, repair, maintenance and replacement of all water facilities located on the Owner's Lot, including but not limited to the service line running from the house to

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the water meter located at or near the property line, and, if required, the individual pressure reducing valve and appurtenances. Each Owner agrees to install, operate, repair, maintain and replace the water facilities for which such Owner is responsible in such a manner as to cause no injury to other property or the overall water system, and to be in compliance with any rules and regulations adopted by the Black Rock Utilities Board concerning the water system.

11.5.3. Potable Water Service – Fees. Each Owner shall pay to Black Rock Utilities such amounts for water meter installation and replacement and such fees for potable water service, including monthly charges and all other fees and charges, as may be set from time to time by Black Rock Utilities relating to potable water service. All such charges shall be considered Assessments, as provided in Article 14 herein.

11.5.4. Potable Water Meter. Water usage shall be separately metered for each Lot. After the required installation and meter fees are paid, Black Rock Utilities shall supply and install a water meter which is National Sanitation Foundation approved, and shall further initiate water service. All meters will be installed and located at or near the property line. Black Rock Utilities shall be responsible for the operation, repair, maintenance and replacement of the water meter so that the water meter will at all times be in compliance with the applicable requirements of the Department of Environmental Quality, the County of Kootenai and Black Rock Utilities. However, the cost of the water meter and the cost of replacement of any such water meter shall be the responsibility of the Owner. Each Owner shall cooperate in permitting the Declarant and/or the Black Rock Utilities to periodically read the water meter to determine water usage. Black Rock Utilities may, but shall not be required to, take into account the amount of water usage in determining the fees and charges to be made for sewer and/or water service.

11.5.5. Irrigation Water Service – Ongoing Maintenance. As set forth in Section 11.1.1. above, the water mains for irrigation water service and the service line running between the water main and the water meters will be conveyed to, owned by, and subject to the control of Black Rock Utilities. Black Rock Utilities will also own and be responsible for the replacement, repair and maintenance of the water meter for irrigation water on each Lot. The cost of any water meter replacement, however, shall be the responsibility of the Owner. Each Owner shall also be responsible for the operation, repair, maintenance and replacement of all water facilities located on such Owner's Lot, including but not limited to the service line running from the house to the water meter located at or near the property line; and, if required, the individual pressure reducing valve and appurtenances. Each Owner agrees to install, operate, repair, maintain and replace the water facilities for which that Owner is responsible in such a manner as to cause no injury to other property or the overall water system, and to be in compliance with any rules and

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regulations adopted by the Black Rock Utilities Board concerning the water system.

11.5.6. Irrigation Water. Irrigation use is defined as any use necessary for maintaining any and all landscaping, including common areas and, for purposes of this Declaration, all out of doors use, including, but not limited to, watering and/or washing pets, washing cars, and the like.

11.5.7. Irrigation Water Service – Fees. Each Owner shall pay to Black Rock Utilities such amounts for water meter installation and replacement and such fees for irrigation water service, including monthly charges and all other fees and charges as may be set from time to time by Black Rock Utilities relating to irrigation water service. All such charges shall be considered Assessments, as provided in Article 14 herein.

11.5.8. Irrigation Water Meter. Irrigation water usage shall be separately metered for each Lot. After the required installation and water meter fees are paid, Black Rock Utilities shall supply and install a water meter and shall initiate services. All meters will be installed and located at or near the property line. Black Rock Utilities shall be responsible for the operation, repair, maintenance and replacement of the water meter so that the water meter will at all times be in compliance with the applicable requirements of the Department of Environmental Quality, the County of Kootenai and Black Rock Utilities, provided, however, that the cost of the water meter and the cost of replacement of any such water meter shall be the responsibility of the Owner. Each Owner shall cooperate in permitting Black Rock Utilities to periodically read the water meter to determine water usage. Black Rock Utilities may, but shall not be required to, take into account the amount of water usage in determining the fees and charges to be made for sewer and/or water service.

11.5.9. Landscaping Use. Only irrigation water shall be used for any and all landscaping, including Common Areas.

11.5.10. Frost-Free Hose Bibbs. Frost free hose bibbs are allowed on Dwelling Units, however the number allowed per Dwelling Unit shall be based upon the size of the Dwelling Unit and shall be at the discretion of the Design Committee. ANY USE OF POTABLE WATER OUT OF DOORS IS PROHIBITED.

11.6. Unauthorized Hook-Up. Each Owner shall notify the Association prior to hooking onto water and sewer systems provided by Black Rock Utilities. It is the responsibility of Black Rock Utilities to provide hook-up to each Lot Owner upon receipt of such notification in writing. Any unauthorized hook-up will result in fines being levied by Black Rock Utilities and may result in termination of service or prosecution, or both. In the event of court action as a result of an unauthorized hook-up, then all costs and expenses, including actual attorneys'

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fees and legal assistants' fees incurred by Black Rock Utilities in connection with such action shall be paid by the violating Owner.

11.7. Owner Repairs. Owner shall immediately notify Association of any leaks or breaks in the service lines and/or residence lines for which Owner may or may not be responsible. If Owner fails to repair any leaks or breaks for which Owner is responsible, Association has the right to enter onto Owner's property and make any and all repairs necessary to preclude water waste or damage, and will bill Owner for said repairs. Owner will be responsible to reimburse Black Rock Utilities for repairs within thirty (30) days, and any such amount incurred shall be deemed Assessments as provided in Article 14 herein.

11.8. Use of Water for Fire Fighting. Each Owner shall be responsible for the cost of all water used for fire fighting on the Owner's Lot and shall be responsible for any loss/damage caused to the Association, Black Rock Utilities, the Club or other third parties by water used for fire fighting on Owner's Lot.

11.9. No Liability for Interruption of Service. The Association, Black Rock Utilities and the Utilities Board shall not be liable for any actual or consequential damages arising from, or related to the intentional or unintentional interruption of water services, regardless of the cause of the interruption. Each Owner and their successors and assigns agree to indemnify and hold harmless the Association and Black Rock Utilities for any and all liability related in any fashion to interruption of service. Further, Owner and their successors and assigns agree that they shall never file or assist in the prosecution of any claim against the Association and/or Black Rock Utilities related in any fashion to the provision or lack of provision of water service.

ARTICLE 12.

PROPERTY USE MAINTENANCE AND RESTRICTIONS

12.1. General Restriction. The Property will be used only for the purposes set forth in this Declaration, as permitted by the applicable ordinances of the County of Kootenai, the laws of the State of Idaho and the United States, and as set forth in the Black Rock Documents or other specific recorded covenants affecting all or any part of the Property.

12.2. Use of Lots. Each Lot may be used only for the purposes permitted by the applicable zoning, including any applicable planned unit development. In the event of a conflict between any provision of the applicable planned unit development and any provision of this Declaration, the more restrictive provision shall control. Lease of a Dwelling Unit shall not be considered a business or trade within the meaning of this subsection.

12.3. Motorized Vehicles. No trucks, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers or similar vehicles, other than passenger automobiles or pickup or utility trucks with a capacity of one ton or less, or any other motorized vehicles will be

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parked, stored or in a manner kept or placed on any portion of the Property except in an enclosed garage. This restriction, however, will not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing services to the Property or to Declarant or the other Owners.

No snowmobiles or off-road vehicles will be allowed to operate anywhere in the Property, except for emergency purposes or in areas specifically designated for such purposes by the Board. Motorcycles may be used on roads in the Property only for transportation to and from a dwelling and shall be operated in a quiet manner and in compliance with the rules of the road.

Motorcycles are only permitted to leave from or arrive at the Property. All other starting and running of motorcycles on any Lot shall be strictly prohibited.

No unlicensed driver shall operate any motorized vehicle on the Property. Only current licensed vehicles shall be on the Property.

Declarant may, but will not be obligated to, include among the Common Area parcels of real estate, one or more walking trail(s), one or more horse trails, other amenities and open space areas. The walking trail located within the Property shall be for the use and enjoyment of all Owners and shall be used strictly for walking, running and jogging. Motorized apparatus of any kind, as well as skateboards, roller blades and the like is strictly prohibited on the trails. All users will use the trails at their own risk.

12.4. **Parking.** No overnight on-street parking shall be allowed in the Project nor shall parking be allowed in cul-de-sacs.

12.5. **Automobile Repair, Abandoned, Inoperable, or Oversized Vehicles.** No work on automobiles or other vehicle repair will be performed in any visible or exposed portion of Community except in emergencies. All repair work shall be done in Owner's garage or off the Property. No abandoned or inoperable vehicles of any kind will be stored or park on or any portion of the Property, except as provided below. "Abandoned or inoperable vehicle" is defined as any vehicle that has not been driven under its own propulsion for a period of three weeks or longer; provided, however, this will not include vehicles parked by Owners while on vacation or residing away from Community. A written notice describing the "abandoned or inoperable vehicle" and requesting its removal may be personally served by the Association upon the Owner or posted on the unused vehicle. If such vehicle has not been removed within 72 hours after notice has been given, the Association will have the right to remove the vehicle without liability, and the expense of removal will be a Default Assessment charged against the Owner as provided in Section 14.5. All unsightly or oversized vehicles, snow removal equipment, garden maintenance equipment, and all other unsightly equipment and machinery may be required by Declarant or the Board of Directors to be stored at a designated location or locations.

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"Oversized" vehicles, for purposes of this Section, will be vehicles that are too high to clear the entrance to the Owner's garage.

12.6. Excavation. No excavation will be made except in connection with improvements approved as provided in these covenants. For purposes of this Section, "excavation" means any disturbance of the surface of the land that results in a removal of earth, rock, or other substance a depth of more than 18 inches below the natural surface of the land.

12.7. Electrical, Television, and Telephone Service. All electrical, television, and telephone service installations will be placed underground.

12.7.1. Permanent Electric Service Obligation. Each Lot must connect for permanent electric service within seventy-two (72) months after the electric backbone system serving such Lot is complete and energized. The Association will provide written notice of the date of such completion applicable to each Lot. In the event that a Lot has not connected for permanent electric service within the applicable period, the Owner shall be responsible for payment of a fee of Two Thousand Three Hundred Fifty and No/100ths Dollars (\$2,350.00) to Kootenai Electric Cooperative, Inc.

12.7.2. Interest on Obligation. The amount of the fee set forth in section 12.7.1. above shall accrue interest at the rate of one and one-half percent (1 1/2%) per month from the date such fee becomes due and payable.

12.7.3. Lien to Secure Obligation. In order to secure payment of the fee set forth in section 12.7.1. above and any interest accrued thereon, Kootenai Electric Cooperative, Inc., or its successor electric provider, shall have a lien on any Lot for the amount of such fee ("Electric Lien") if such fee is not paid within thirty (30) days of the end of the applicable seventy-two (72) month period. Kootenai Electric Cooperative, Inc. may record notice of such Electric Lien in the office of the Kootenai County Recorder and such lien shall encumber the Lot until the obligation underlying such lien has been paid in full. Said lien may be foreclosed in the same manner as foreclosure of mortgages and other liens as provided in Title 6, Chapter 1 of the Idaho Code.

12.7.4. Attorneys' Fees and Costs to Prevailing Party. In the event a foreclosure action is instituted to foreclose a lien created as set forth in section 12.7.3., the prevailing party in such action shall be entitled to recover its legal costs and reasonable attorneys' fees related to such action.

12.8. Sanitary Sewer. Each structure designed for occupancy will connect with Black Rock Utilities. No drainfields shall be permitted on any residential lots.

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12.9. Water and Wells. Each structure designed for occupancy will connect with Black Rock Utilities. No wells from which water, oil or gas is produced shall be permitted on any residential Lots. Declarant, the Association, and their assigns, through Black Rock Utilities, will own, install, maintain and operate all water wells, water works, storage tanks, reservoirs, or other water facilities in the Common Area.

12.10. Signs. Signs of any kind, including but not limited to, advertising for sale of Lots, homes, construction/contractors signs or the like are strictly prohibited.

12.11. Animals and Pets. All pets (animals, birds, reptiles or living creatures of any kind) kept within any Dwelling Unit or Lot in the common areas are subject to the following restrictions.

12.11.1. Allowed Pets. Raising or housing of any animal on a commercial basis, including, without limitation, kenneling and breeding, is prohibited. No animals, livestock, or poultry of any kind will be kept on any portion of the Property, other than domestic household pets.

12.11.2. Limitation of Number of Pets. No more than three (3) domestic household pets are allowed per Dwelling Unit.

12.11.3. Containment. Domestic household pets shall be kept within the Building Envelope perimeter on the Owner's Lot and shall not be permitted to run at large at any time. Dogs that are leashed may not be left unattended. Underground electric fencing may be used around the perimeter of the Building Envelope. Pets shall be managed and controlled in such a way as to not become a nuisance due to excessive noise, odors or any other characteristics that may impair the enjoyment of the Property by other Owners.

12.11.4. Leashes. Pedestrians within the Property who are accompanied by dogs must have the dogs under the pedestrians' direct control by use of a leash not to exceed 10 feet in length.

12.11.5. Right for Removal. The Association may at any time require the removal of any pet which it finds to be disturbing other Owners unreasonably, and may exercise this authority for specific pets even though other pets are permitted to remain.

12.11.6. Damage by Pets. Owners and their guests are responsible for any damage to the Common Areas, to other real or personal property, or to individuals within the Property caused by their pets.

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12.11.7. Alterations to Common Area. Nothing shall be altered or constructed in a Common Area to house or accommodate pets.

12.11.8. Wildlife Attractants and Repellants. The use of wildlife attractants such as salt licks is prohibited. The use of devices intended to repel wildlife, such as deer whistles, etc., is also prohibited. In the event of wildlife constituting a nuisance or potential harm, appropriate animal control services may be utilized. This provision shall not include bird feeders.

12.12. No Outside Clothesline. No laundry or wash will be dried or hung outside any Dwelling Unit.

12.13. Antenna. Standard TV antennas and satellite dishes which are one meter in diameter or less shall be permitted on the Property; however, such over-the-air reception devices shall comply with all Design Guidelines, screening requirements, and other applicable restrictions pertaining to the location and manner of installation. Declarant and/or the Association shall have the right, without obligation to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or a portion of the Property, should any master system or systems be utilized by the Association and require such exterior apparatus.

12.14. Window Coverings. Windows shall be covered by drapes, blinds, shades or shutters or as approved by Design Committee and shall not be covered with foil, cardboard or similar material.

12.15. Noise. No use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound-producing device, so as to be audible to occupants of other Dwelling Units, except for security alarm device used exclusively for security purposes, will be permitted on any portion of the Property.

12.16. Drainage. No Owner will do or permit any work, place any landscaping or install any other improvements or suffer the existence of any condition whatsoever which will alter or interfere with the drainage pattern of the Property, except to the extent such alteration and drainage pattern is approved in writing by the Design Committee or the Board of Directors, and except for the right which is hereby reserved to Declarant to alter or change the drainage patterns.

12.17. Construction Regulations of the Design Guidelines. All Owners and contractors will comply with the portions of the Design Guidelines regulating construction activities. Such regulations may affect, without limitation, the following: trash and debris removal; sanitary facilities; parking areas; outside storage; restoration of damaged property; conduct and behavior of builders, subcontractors and Owners' representatives on the Property at any time; the conservation of landscape materials; and fire protection.

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12.18. Blasting. If any blasting is to occur, the Association, Design Committee and Declarant will be informed far enough in advance to allow them to make such investigation as they deem necessary to confirm that appropriate protective measures have been taken prior to the blasting. Notwithstanding the foregoing, no approval of any blasting by Association, Declarant or the Design Committee will in any way release the person conducting the blasting from any liability in connection with the blasting, nor will such approval in any way be deemed to make Association, Declarant or the Design Committee liable for any damage which may occur from blasting, and the person doing the blasting will defend, hold harmless and indemnify Association, Declarant and the Design Committee from any such expense or liability.

12.19. Temporary Structures. No temporary structures will be permitted except as may be determined to be necessary during construction and as specifically authorized by the Design Committee, and except as necessary for the exercise by Declarant of the Special Declarant Rights.

12.20. Trash. No trash, ashes, garbage, construction materials or other refuse will be thrown or dumped on any land or area within the Property. The Association will cooperate in and encourage programs to recycle trash and other refuse. There will be no burning or other disposal of refuse out of doors. Each Owner will provide suitable receptacles for the temporary storage and collection of refuse, and all such receptacles will be screened from the public view and from the wind and protected from animal and other disturbance.

12.21. Outside Burning. There will be no exterior fires, except barbeques, outside fireplaces, and the like which shall be contained within these facilities or receptacles and in areas designated and approved by the Design Committee. No Owner will permit any condition upon its portion of the Property that creates a fire hazard or is in violation of fire prevention codes or regulations.

12.22. Fertilizers and Pesticides. Application of fertilizers or pesticides within the Property should be minimized and may be applied to landscaping provided care is taken to minimize runoff.

12.23. Snow Clearance. Snow clearance and/or removal is the responsibility of the Association (excluding private driveways), and Owners shall not clear or remove snow from Owners' driveways or walkways onto Common Areas or roads within the Property.

12.24. Compliance with Laws. Subject to the rights of reasonable contest, each Owner will comply with the provisions of all applicable laws, regulations, ordinances, and other governmental or quasi-governmental regulations with respect to all or any portion of the Property.

Without limiting the generality of the foregoing, each Owner will abide by any wildlife regulations imposed by the Declarant, and/or the Association or any agency or authority having jurisdiction over the Property. Further, no Owner will

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dispose or allow any person under the Owner's control or direction to release, discharge or emit from the Property or dispose of any material on the Property that is designated as hazardous or toxic under any federal, state or local law, ordinance or regulation.

12.25. Obstructions. There will be no obstruction of any walkways or paths or interference with the free use of those walkways and paths except as may be reasonably required in connection with repairs. The Owners, their families, tenants, guests and invitees are granted nonexclusive easements to use the walkways and paths within the Property, subject to such rules as the Board may adopt from time to time.

12.26. Camping and Picnicking. No camping or picnicking will be allowed within the Property except in those areas designated for such purposes. The Board, in its discretion, may ban or permit public assemblies and rallies within the Property.

12.27. Building Code. All improvements shall be constructed in accordance with the then applicable building codes of the governmental entity having jurisdiction, or if no such building codes are in effect, then in accordance with the Uniform Building Code. At present, the County of Kootenai has adopted a building code. All development of the Property shall be in accordance with the Kootenai County building code and building permits shall be obtained as provided in the Kootenai County building code. All development of the Property shall also be in accordance with the Kootenai County zoning regulations applicable to the Property and the provisions of the applicable Planned Unit Development.

12.28. Clear Vision Area and Cul-de-sacs. Owners shall cooperate in creating and maintaining a triangular "clear vision" area to be established and maintained at all road intersections and switchback curves, such that each of the two road sides has a distance of 40 feet measured from the point of intersection (or the midpoint of the switchback curve) along the road centerlines of each road. Cul-de-sacs shall be kept unobstructed at all times.

12.29. Nuisance. No obnoxious or offensive activity will be carried on within the Property, nor will anything be done or permitted which will constitute a public nuisance. No noise or other nuisance will be permitted to exist or operate upon the Property so as to be offensive or detrimental to any other part of the Property or its occupants.

12.30. General Practices Prohibited. The following practices are prohibited at Black Rock:

12.30.1. Allowing construction suppliers and contractors to clean their equipment other than at a location designated for that purpose by the Design Committee;

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12.30.2. Removing any rock, plant material, top soil or similar items from any property of others;

12.30.3. Use of surface water for construction; or

12.30.4. Careless disposition of cigarettes and other flammable materials.

12.30.5. Littering.

12.31. Use of Property During Construction. It will be expressly permissible and proper for Declarant and any Owner acting with the prior written consent of the Design Committee, and their respective employees, agents, independent contractors, successors and assigns involved in the construction of improvements on, or the providing of utility service to, the Property, the Expansion Property, if any, or other real property owned by Declarant, to perform such activities and to maintain upon portions of the Property as they deem necessary, such facilities as may be reasonably required, convenient, necessary or incidental to such construction and development of the Property. This permission specifically includes, without limiting the generality of the foregoing, maintaining storage areas, construction yards and equipment and signs. However, no activity will be performed and no facility will be maintained on any portion of the Property in such a way as to unreasonably interfere with or disturb any purchaser or Owner of a Lot, or to unreasonably interfere with the use, enjoyment or access of such Owner or his tenants, employees, guests, or business invites, of and to his Lot. If any Owner's use under this provision is deemed objectionable by the Design Committee, then the Design Committee, in its sole discretion, may withdraw this permission.

Notwithstanding the foregoing, this Section will not operate to prevent the exercise of any Special Declarant Rights.

12.32. Partition or Combination of Lots. No part of a Lot which is restricted in use to a single family dwelling may be partitioned or separated from any other part thereof. No such Lots may be combined, but the Owner of two or more contiguous Lots may build one single family Dwelling Unit on the contiguous Lots, upon complying with all applicable requirements of the County of Kootenai, and with all applicable Design Guidelines, including without limitation procedures for adjusting Building Envelopes otherwise drawn for the Lots to accommodate a larger Dwelling Unit, minimum and maximum limitations of living area that may be constructed on any given number of contiguous Lots, and measures necessary to preserve any easements reserved with respect to the contiguous Lots.

The fact that two or more contiguous Lots may be owned by one person and developed with one single family Dwelling Unit will not affect the number of votes or the amount of Assessments allocated to the Lots. If the Owner is required by the County of Kootenai or any other governmental authority or by a

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Mortgagee to replat the Lots in order to construct improvements on them, the number of votes and the allocation of Assessments to the Lots after replatting will equal the sum of the votes and Assessments allocated to the Lots before the replatting. Each Lot will be conveyed, transferred, gifted, devised, bequeathed, encumbered or otherwise disposed of, as the case may be, with all appurtenant rights and interests created by law or by this Declaration, including the Owner's membership in the Association and the right to use the Common Area, and with the appropriate allocation of voting rights and liability for Assessments established for the Lot as provided in this Declaration.

12.33. Common Area - Covenants to Apply. The preceding provisions of this Article will apply to the Common Area.

12.34. Rental and Leasing. The Owner of a Lot will have the right to rent or lease his Lot, subject to the following conditions:

12.34.1. For Lots in areas designated on the Plat as being for single-family residential use, all lease or rental agreements must be in writing with a minimum term of at least six (6) months. For Lots in areas designated for multi-family residences, if any, the Owner of each such Lot may determine the appropriate lease term.

12.34.2. The lease or rental agreement shall be specifically subject to the Black Rock Documents, which shall be incorporated by reference therein, and any failure of a tenant to comply with the Black Rock Documents will be a default under the lease or rental agreement.

12.34.3. The Owner shall be liable for any violation of the Black Rock Documents committed by the Owner's tenant, without prejudice to the Owner's right to collect from tenant any sums paid by the Owner on behalf of the tenant.

12.35. Enforcement. The Association may take such actions as it deems advisable to enforce this Declaration. In addition, the Association will have a right of entry on any part of the Property for the purposes of enforcing this Article, and any costs incurred by the Association in connection with such enforcement which remain unpaid 30 days after the Association has given notice of the cost to the Owner and otherwise complied with this Declaration will be subject to interest at the Default Rate from the date of the advance by the Association through the date of payment in full by the Owner, and will be treated as a Default Assessment enforceable as provided in Article 14.

ARTICLE 13. OWNERS' OBLIGATIONS FOR MAINTENANCE

13.1. Owner's Responsibility for Lot. Except as provided in the Black Rock Documents or by written agreement with the Association, all maintenance of a Lot and the Improvements located on it will be the sole responsibility of the

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Owner of the Lot. Each Owner will maintain its Lot in accordance with the community-wide standard of the Community. The Association may, at the discretion of the Board, assume the maintenance responsibilities of such Owner if, in the opinion of the Board, the level and quality of maintenance being provided by such Owner does not satisfy such standard. Before assuming the maintenance responsibilities, the Board will notify the Owner in writing of its intention to do so, and if the Owner has not commenced and diligently pursued remedial action within thirty (30) days after receipt of such written notice, then the Association will proceed to assume such responsibilities. The expenses of the maintenance assumed by the Board will be reimbursed to the Association by the Owner within thirty (30) days after the Association notifies the Owner of the amount due, and any sum not reimbursed within that thirty (30) day period will bear interest at the Default Rate from the date of the expenditure until payment in full. Such charges will be a Default Assessment enforceable as provided in Article 14.

13.2. Owner's Negligence. If the need for maintenance, repair or replacement of any portion of the Common Area (including improvements located on it) arises because of the negligent or willful act or omission of an Owner or his family member, guest, invitee or tenant, then the expenses incurred by the Association for the maintenance, repair or replacement will be a personal obligation of that Owner. If the Owner fails to repay the expenses incurred by the Association within 30 days after the notice to the Owner of the amount owed, then those expenses will bear interest at the Default Rate from the date of the advance by the Association until payment by the responsible Owner in full, and all such expenses and interest will become a Default Assessment enforceable in accordance with Article 14.

ARTICLE 14. ASSESSMENTS

14.1. Covenant to Pay and Personal Obligation for Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by accepting a deed for a Lot, is deemed to covenant to pay to the Association (1) the Annual Assessments imposed by the Board of Directors as necessary to fund the Maintenance Fund and to generally carry out the functions of the Association, including, without limitation, the payment of Common Expenses; (2) Special Assessments for capital improvements and other purposes as stated in this Declaration; (3) Utility Assessments for any utility services provided by the Association; (4) Default Assessments which may be assessed against a Lot pursuant to the Black Rock Documents for the Owner's failure to perform an obligation under the Black Rock Documents or because the Association has incurred an expense on behalf of or caused by the Owner under the Black Rock Documents; and (5) any other Assessments as the Board may impose from time to time. Owner further covenants to pay all utility fees and charges levied by Black Rock Utilities.

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Each such Assessment, together with fines, interest, costs and reasonable attorneys' (and legal assistants') fees, will also be the personal and individual obligation of the Owner of such Lot as of the time the Assessment becomes due, and two or more Owners of a Lot will be jointly and severally liable for such obligations. No Owner may exempt himself from liability for any Assessment by abandonment of his Lot or by waiver of the use or enjoyment of the Common Area. Suit to recover a money judgment for unpaid Assessments and related charges as listed above may be maintained without foreclosing or waiving the Assessment lien provided in this Declaration.

14.2. Purpose of Assessments. The Assessments levied by the Association will be used exclusively to promote the recreation, health, safety, and welfare of the Owners and occupants of Community, and to effect the provisions of the Black Rock Documents.

14.3. Annual Assessments.

14.3.1. Calculation of Annual Assessments. At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts for funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments, and the amount to be generated through the levy of Annual Assessments and Special Assessments. The Association is authorized to levy Annual Assessments equally against all Lots subject to assessment to fund the Common Expenses. In determining the Annual Assessment, the Board may consider any assessment income expected to be generated from any additional Lots reasonably anticipated to become subject to assessment during the fiscal year.

Declarant may, but shall not be obligated to, reduce the Annual Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Annual Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget.

The budget shall be determined by the Board of Directors annually in its sole discretion. If any Board fails for any reason to determine the

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budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined.

14.3.2. Apportionment of Annual Assessments. Each Owner will be responsible for that Owner's share of the Common Expenses, which will be divided equally among the Lots subject to Assessment pursuant to this Declaration. Accordingly, at any given time, an Owner's share of Common Expenses will be determined as a fraction, the numerator of which is the number of Lots owned by the Owner, and the denominator of which is the number of Lots platted before any combination of Lots and incorporated in the Project. Notwithstanding the preceding sentence, any Common Expenses or portion thereof benefiting fewer than all of the Lots will be assessed exclusively against the Lots benefited. Further, the costs of insurance may be assessed in proportion to risk, and the cost of utilities may be assessed in proportion to usage.

14.3.3. Collection. Annual Assessments will be collected annually in advance on the tenth (10) day of January of each calendar year. The omission or failure of the Association to fix the Annual Assessments for any Assessment period will not be deemed a waiver, modification, or release of the Owners from their obligation to pay the same. The Association will have the right, but not the obligation, to prorate refunds of any Annual Assessment in excess of the actual expenses incurred in any fiscal year.

14.3.4. Date of Commencement of Annual Assessments. The Annual Assessments will commence on each Lot on a prorated basis for the current year on the first of the month following completion and transfer to the Association of any component of infrastructure serving such Lot and such Annual Assessments will continue thereafter annually as set forth in Section 14.3.3. above. Declarant will pay the Annual Assessments for Lots not sold at the time such Assessments become due and payable. Upon sale of such Lot to an Owner, a prorated Annual Assessment for the year of sale, based on the number of months remaining in said year, shall be collected from Owner and shall be reimbursed to Declarant to the extent Declarant has previously made payment thereof. Any amount not required to be reimbursed to Declarant shall be paid to the Association.

14.3.5. Capitalization of the Association. In accordance with Section 9.3., upon acquisition of record title to a Lot from Declarant or any seller after Declarant, each Owner will contribute to the working capital and reserves of the Association an amount equal to one-fourth of the amount of the Annual Assessment determined by the Board of Directors for the Lot for the year in which the Owner acquired title. The Association will maintain the working capital funds in segregated accounts to meet unforeseen expenditures or to acquire additional equipment or services for the benefit of the Members. Such payments to this fund will not be considered advance payments of Annual Assessments.

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14.4. Special Assessments.

14.4.1. Determination by Board. The Board of Directors may levy in any fiscal year one or more Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, repair or replacement of a described capital improvement upon the Common Area, including the necessary fixtures and personal property related thereto, or, after adopting and submitting a revised budget to the Association as may be required, to make up any shortfall in the current year's budget.

14.4.2. Apportionment and Collection of Special Assessments. The Board will apportion Special Assessments among the Lots and collect payment according to the same guidelines as set forth for Annual Assessments in Section 14.3.2. Lots in a newly platted portion of the Expansion Project which is added to the Property shall not be subject to Special Assessments which preceded the recording of the new Plat, unless the Special Assessment is due in monthly or periodic installments in which case the Lots in the newly platted portion shall be subject to the Special Assessment only to the extent of the installments which become due after the recording of the Plat.

14.4.3. Notice. Notice of the amount and due dates for such Special Assessments must be sent to each Owner at least 30 days prior to the due date if payable in a single payment, and at least 30 days prior to the first due date if payable in periodic installments.

14.5. Default Assessments. All monetary fines, penalties, interest or other charges or fees (excluding Annual and Special Assessments) levied against an Owner pursuant to the Black Rock Documents, or any expense of the Association which is the obligation of an Owner or which is incurred by the Association on behalf of the Owner pursuant to the Black Rock Documents, and any expense (including without limitation attorneys' and legal assistants' fees) incurred by the Association as a result of the failure of an Owner to abide by the Black Rock Documents, constitutes a Default Assessment, enforceable as provided in this Declaration below.

14.6. Utility Assessments. All fees and charges levied by Black Rock Utilities for water and sewer facilities and services shall be considered Utility Assessments, and the provisions regarding remedies and liens for Assessments set forth in this Declaration shall apply to such Utility Assessments.

14.7. General Remedies of Association for Nonpayment of Assessment. Any installment of an Annual Assessment or a Special Assessment that is not paid within thirty (30) days after its due date will be delinquent. In the event that an Annual or Special Assessment becomes delinquent, or in the event any Default Assessment is established under this

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Declaration, the Association or Black Rock Utilities, as applicable, in its sole discretion, may take any or all of the following actions:

14.7.1. Assess a late charge for each delinquency at uniform rates set by the Board of Directors from time to time;

14.7.2. Charge interest from the date of delinquency at the Default Rate;

14.7.3. Suspend the voting rights of the Owner during any period of delinquency;

14.7.4. Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year will be due and payable at once;

14.7.5. Bring an action at law against any Owner personally obligated to pay the delinquent Assessment charges;

14.7.6. File a Notice of Lien with respect of the Lot and foreclose as set forth in more detail below;

14.8. Assessment Lien. Any Assessment chargeable to a Lot will constitute a lien on the Lot, effective the due date of the Assessment. To evidence the lien, the Association or Black Rock Utilities, as applicable, may, but will not be obligated to, prepare and record, at the office of the Kootenai County Recorder a Notice of Lien with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association or Black Rock Utilities, as applicable, and the delinquent Assessment amounts then owing. Any such notice will be duly signed and acknowledged by an officer or Director of the Association or Black Rock Utilities, as applicable, or by the Manager of such entity, and will be served upon the Owner of the Lot by personal service or by certified or registered mail to the last known address of the Owner or Owners of the Lot and any holder of a prior perfected security interest. Thirty (30) days following the mailing of such notice to the Owner, the Association or Black Rock Utilities, as applicable, may proceed to foreclose the lien in the manner provided under Idaho law. The Association, or Black Rock Utilities, as applicable, will have the power and the right to bid on a Lot at foreclosure sale and to acquire, hold, lease, mortgage and convey any such Lot.

14.9. Successor's Liability for Assessment. All successors to the fee simple title of a Lot, except as provided in Section 14.10, will be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' and legal assistants' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid by such successor. This liability of a successor will not be personal and will terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor will

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be entitled to rely on the statement of status of Assessments by or on behalf of the Association under Section 14.13.

14.10. Waiver of Homestead Exemption: Subordination of the Lien.

The Assessment liens will be superior to and prior to any homestead exemption provided now or in the future by the laws of the State of Idaho, and to all other liens and encumbrances except the following:

14.10.1. Prior Liens. Liens and encumbrances recorded before the date of recording this Declaration;

14.10.2. Tax, Governmental and Statutory Lien. Liens for real estate taxes and other governmental assessments or charges duly imposed against the Lot by an Idaho governmental or political subdivision or special taxing district, or any other liens made superior by statute; and

14.10.3. First Mortgage Liens. The lien for all sums unpaid on a First Mortgage recorded before the date on which the Assessment sought to be enforced became delinquent, including any and all advances made by the First Mortgagee, even though some or all of such advances may have been made subsequent to the date of attachment of the Association's lien.

With respect to Section 14.9, any First Mortgagee who acquires title to a Lot by virtue of foreclosing the First Mortgage or by virtue of a deed or assignment in lieu of such a foreclosure, or any purchaser at a foreclosure sale of the First Mortgage, will take the Lot free of any claims for unpaid Assessments, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees against the Lot which accrue prior to the time such First Mortgagee or purchaser acquires title to the Lot.

All other persons who hold a lien or encumbrance of any type not described in Sections 14.10.1, through 14.10.3, will be deemed to consent to the subordination of such lien or encumbrance to the Association's current and future Assessment liens, interest, late charges, costs, expenses, and attorneys' (and legal assistants') fees, as provided in this Article, whether or not such consent is specifically set forth in the instrument creating any such lien or encumbrance.

14.11. Reallocation of Assessments Secured by Extinguished Liens.

The sale or transfer of any Lot to enforce any of the liens to which the Assessment lien is subordinate will extinguish such Assessment lien as to installments that became due prior to such sale or transfer. The amount of such extinguished lien may be reallocated and assessed to all Lots as a Common Expense at the direction of the Board of Directors. However, no such sale or transfer will relieve the purchaser or transferee of a Lot from liability for, or the Lot from the lien of, Assessments made after the sale or transfer.

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14.12. Exempt Property. The following portions of the Property will be exempt from the Assessments, charges, and liens created under this Declaration:

14.12.1. All utility lines and easements; and

14.12.2. Common Area.

14.13. Statement of Status of Assessments. The Association will furnish to an Owner or his designee or to any Mortgagee a statement setting forth the amount of unpaid Assessments then levied against the Lot in which the Owner, designee or Mortgagee has an interest. The Association will deliver the statement personally or by certified mail, first class postage prepaid, return receipt requested, to the Inquiring party within 14 business days after the registered agent of the Association receives the request by personal delivery or by certified mail, first class postage prepaid, return receipt requested. The information contained in such statement, when signed by an officer or director of the Association or the Manager, will be conclusive upon the Association, the Board, and every Owner as to the person or persons to whom such statement is issued and who rely on it in good faith.

14.14. Failure to Assess. The omission or failure of the Board to fix the Assessment amounts or rates or to deliver or mail to each Owner an Assessment notice will not be deemed a waiver, modification, or release of any Owner from the obligation to pay Assessments. In such event, each Owner will continue to pay Annual Assessments on the same basis as for the last year for which an Assessment was made until a new Assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

ARTICLE 15. PROPERTY RIGHTS OF OWNERS

15.1. Owners' Easements of Access and Enjoyment. Every Owner has a perpetual, non-exclusive easement for access to and from his Lot and for the use and enjoyment of the Common Area by all Owners of said Lot, their families, guests, invitees, tenants and employees. Said easement is appurtenant to and will pass with the title to said Lot, subject to the provisions set forth in this Article.

15.2. Easements of Record and of Use. The Property shall be subject to all easements shown on any recorded Plat and to any other easements of record or of use as of the date of recordation of this Declaration.

15.3. Emergency Access Easement. A general easement is hereby granted to all police, sheriff, fire protection, ambulance, and all other similar emergency agencies or persons to enter upon all streets and upon the Property in the proper performance of their duties.

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15.4. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment and for maintenance and use of any permitted encroachment, between each Lot and any adjacent Common Area and between adjacent Lots or any Lot and the Club Property due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of or with the knowledge and consent of, an Owner, occupant, or the Association.

15.5. Easements for Utilities, Etc. There are hereby reserved unto Declarant, so long as the Declarant owns any property described on Exhibit "A" of this Declaration, the Association, and the designees of each (including, without limitation, any utility) access and maintenance easements upon, across, over, and under all of the Properties to the extent reasonably necessary for the purpose of replacing, repairing and maintaining cable television systems, master television antenna systems, security and similar systems, roads, walkways, trails, lakes, ponds, wetlands, drainage systems, street lights, signage and all utilities, including but not limited to water, sewers, meter boxes, telephone, gas and electricity and for the purpose of installing any of the foregoing on property which it owns or within easements designated for such purposes on recorded plats of the Property. Declarant further hereby reserves an easement in favor of itself, the Association, and the designees of each, upon, across, over and under all of the Property for the creation, use and maintenance of wildlife corridors, winter wildlife ranges, and natural wildlife habitats. The foregoing easements may traverse the private property of any Owner; provided, however, an easement shall not entitle the holders to construct or install any of the foregoing systems, facilities, or utilities over, under or through any existing dwelling on a Lot, and any damage to a Lot resulting from the exercise of an easement shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of an easement shall not unreasonably interfere with the use of any Lot and, except in an emergency, entry onto any Lot shall be made only after reasonable notice to the Owner or occupant.

Declarant specifically reserves the right to convey to Black Rock Utilities, electric company, and cable television or communications systems supplier easements across the Property for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. However, the exercise of this easement shall not extend to permitting entry into the Dwelling Unit on any Lot, nor shall any utilities be installed or relocated on the Property, except as approved by the Board or Declarant.

Should any entity furnishing a service covered by the general easement herein provided request a specific easement by separate recordable document, the Board shall have the right to grant such easement over the Property without creating a conflict with the terms hereof. The easements provided for in this

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Article shall in no way adversely affect any other validly recorded easement on the Property.

The Board shall have, by a two-thirds (2/3) vote, the power to dedicate portions of the Common Area to any local, state or federal governmental or quasi-governmental entity.

15.6. Easements for Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns, and designees the non-exclusive right and easement, but not the obligation, to enter upon the ponds, streams, and wetlands located within the Common Area to (i) install, keep, maintain and replace pumps in order to provide water for irrigation of any of the Lots or Common Areas; (ii) construct, maintain, and repair any bulkhead, wall, dam or other structure retaining water; and (iii) remove trash and other debris there from and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Period of Declarant control shall cease subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties abutting or containing any portion of any of the ponds, streams or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association, and their successors, assigns and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwelling Units thereon) adjacent to or within one hundred feet of, ponds and streams within the Properties, in order to (a) temporarily flood and back water upon and maintain water over such portions of the Property; (b) fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the ponds, streams and wetlands within the Common Area; (c) maintain and landscape the slopes and banks pertaining to such ponds, streams and wetlands; and (d) enter upon and across such portions of the Property for the purpose of exercising their rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from, the intentional exercise of such easements. Nothing herein shall be construed to make Declarant, Association or any other Person liable for damage resulting from flooding due to heavy rainfall, or other natural disasters.

15.7. Easements to Serve Expansion Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, designees, successors, assigns, licensees, and mortgagees an easement over the Common Area for the purposes of enjoyment, use, access and development of such Expansion Property as Declarant may designate in the future. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connection and installation of utilities on such property. Declarant and its successors or assigns shall be

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responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property.

15.8. Easements for Club Property.

15.8.1. Every Lot and the Common Area, are burdened with an easement permitting golf balls unintentionally to come upon the Lots, or Common Area adjacent to the Club Property, and for golfers, at reasonable times and in a reasonable manner, to come upon the exterior portions of a Lot, or Common Area to retrieve errant golf balls. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: the Declarant, the Association, or its Members (in their capacity as such); The Club at Black Rock, L.L.C., its successors, successors-in-title to the Club Property, or assigns; any successor Declarant, or any other person or entity submitting property to this Declaration, by Builder or contractor (in their capacities as such); any officer, director or partner of any of the foregoing, or any officer or director of any partner.

15.8.2. The owner of the Club Property, its respective agents, successors and assigns, shall at all times have a right and non-exclusive easement of access and use over those portions of the Common Area reasonably necessary to the operation, maintenance, repair and replacement of the Club Property.

15.8.3. The Lots immediately adjacent to the Club Property are hereby burdened with a non-exclusive easement in favor of the Club Property for overspray of water from any irrigation system serving the Club Property. Under no circumstances shall the Association or the owner of the Club Property be held liable for any damage or injury resulting from overspray or the exercise of this easement.

15.8.4. The owner of the Club Property, its respective successors and assigns shall have a perpetual, exclusive easement of access over the Property for the purpose of retrieving golf balls from bodies of water within the Common Area lying within range of golf balls hit from the Club Property.

15.9. **Easements for Club Activities.** The Club and its members (regardless of whether such members are Owners hereunder), their guests, invitees and the employees, agents, contractors and designees of the Club shall at all times have a right of a nonexclusive easement of access and use over all roadways located within the Property reasonably necessary to travel from/to the entrance to the Property from/to the Club, respectively, and over those portions of the Property (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of The Club. Without

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limiting the generally of the foregoing, members of the Club and permitted members of the public shall have the right to park their vehicles on the roadways located within the Property at reasonable times before, during and after functions held by/at the Club, which may include, without limitation, golf tournaments.

15.10. Right of Entry. The Association shall have the right, but not the obligation, to enter upon any Lot for emergency, security and safety reasons, to perform maintenance pursuant to Article 15 hereof, and to inspect for the purpose of ensuring compliance with this Declaration, as amended from time to time, any Supplemental Declaration, as amended from time to time, the Bylaws, the Design Guidelines, and any rules governed by this Declaration, which right may be exercised by any member of the Board, the Association, officers, agents, employees and managers and all policemen, firemen, ambulance personnel and similar emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner. This right of entry shall include the right of the Association to enter upon any Lot to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition within a reasonable time after requested by the Board, but shall not authorize entry into any Dwelling Unit without permission of the Owner except by emergency personnel acting in their official capacities.

**ARTICLE 16.
SPECIAL DECLARANT RIGHTS
AND ADDITIONAL RESERVED RIGHTS**

16.1. General Provisions. Until the expiration of the Period of Declarant Control, Declarant will have the following Special Declarant Rights:

16.1.1. Completion of Improvement. The right to complete improvements as indicated on any Plat filed with respect to the Property, including, if any, the Expansion Property;

16.1.2. Development Rights. The right to exercise all development rights in connection with the development of the Community (referred to here as "Development Rights"), including without limitation the right or combination of rights hereby reserved by Declarant, as follows:

(a) The right to annex all or part of the Expansion Property, if any, to the Project, in accordance with Article 22.

(b) The right to create Lots and Common Area on the Property, including, if any, the Expansion Property.

(c) The right to subdivide Lots and convert Lots into Common Area on any part of the Property, including, if any, the Expansion Property;

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(d) The right to withdraw real estate, whether contained within the Property initially subject to this Declaration or within the Expansion Property, if any, from Community, as provided in Article 22.

(e) The exclusive right to modify road, water, sewer, dry utilities and fire systems in accordance with any requirements of Kootenai County or any other governing agency having jurisdiction for such systems.

(f) The right to develop the Property and/or the Expansion Property in such phases as Declarant deems appropriate.

16.1.3. Sales Activities. The right to maintain sales and management offices, signs advertising the project and model residences on the Common Area and on Lots owned by Declarant, whether contained within the Property initially subject to this Declaration, or within the Expansion Property, if any.

16.1.4. Easements. The right to use easements through the Common Area on the Property, including the Expansion Property, if any, for the purpose of making improvements on the Property and the Expansion Property, if any.

16.1.5. Association Directors and Officers. The right to appoint any officer or Director of the Association, as provided in this Declaration or the Bylaws.

16.1.6. Order of Exercise of Declarant's Rights. Declarant makes no representations and gives no assurances regarding the legal description or the boundaries of any phase of the Expansion Property, if any, or the order or time in which the phases of the Expansion Property, if any, may be developed or incorporated in the Project, or whether or to what extent any of the Expansion Property, if any, will be developed or incorporated in the Project. Further, the fact that Declarant may exercise one or more of Declarant's Development Rights or other Special Declarant Rights on one portion of the Property (including the Expansion Property, if any) will not operate to require Declarant to exercise a Development Right or other Special Declarant Right with respect to any other portion of the Property (including the Expansion Property, if any).

16.2. Supplemental Provisions Regarding Declarant's Rights. Without limiting the generality of the foregoing, certain of these Special Declarant Rights are explained more fully in this Article below. Further, Declarant reserves the right to amend this Declaration and any Plat in connection with the exercise of any Development Right or any other Special Declarant Right, and Declarant

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also reserves the additional rights retained for the benefit of Declarant in this Article and in other provisions of this Declaration.

16.3. Reservation for Expansion and Construction. Declarant hereby reserves for itself and its successors and assigns and for Owners in all future phases of Community a perpetual easement and right-of-way for access over, upon and across the Property, including the Expansion Property, if any, for construction, utilities, drainage, ingress and egress, and for the use of the Common Area, including Common Area located within the Expansion Property, if any. The location of these easements and right-of-ways may be made certain by Declarant or the Association by instruments recorded in Kootenai County, Idaho.

Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility, ingress and egress, and other easements over and across the Common Areas, and to create other reservations, exceptions, and exclusions convenient or necessary for the use and operation of any other property of Declarant.

16.4. Reservations of Easements, Exceptions, and Exclusions for Utilities, Infrastructure and Access. Declarant reserves for itself and its successors and assigns, and hereby grants to the Association, acting through the Board of Directors, the concurrent right to establish from time to time, by declaration or otherwise, utility and other easements, permits, or licenses over the Common Area, for purposes including but not limited to streets, paths, walkways, drainage, recreation areas and parking areas, and to create other reservations, exceptions, and exclusions in the interest of the Owners and the Association, in order to serve the Owners within Community as initially built and expanded.

Declarant also reserves for itself and its successors and assigns, and grants to the Association, the concurrent right to establish from time to time, by instruments recorded in Kootenai County, Idaho, such easements, permits or licenses over the Common Area for access by certain persons (other than Owners and Owners' families and guests) who may be permitted to use designated portions of the Common Area as contemplated under this Declaration.

16.5. Maintenance Easement. An easement is hereby reserved by Declarant for itself and its successors and assigns and granted to the Association, and any member of the Board of Directors or Manager, and their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate to make emergency repairs or to perform the duties and functions which the Association is obligated or permitted to perform pursuant to the Black Rock Documents, including the right to enter upon any Lot for the purpose of performing maintenance to the landscaping or the exterior of improvements to such Lot, as required by the Black Rock Documents. A further easement is hereby reserved to Declarant for itself and its successors and

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assigns, and granted to the owner of the planned Club Property to be located upon the Lots described on the Plat as Club Property Parcel A and Club Property Parcel B, and to their respective officers, agents, employees and assigns, upon, across, over, in and under the Property and a right to make such use of the Property as may be necessary or appropriate for construction, maintenance and repair of the planned Club Property (including clubhouse and other improvements and amenities) in such manner and at such times of the day or night as may be deemed appropriate in the sole discretion of the owner of the planned Club Property.

16.6. Drainage Easement. An easement is hereby reserved to Declarant for itself and its successors and assigns and granted to the Association, its officers, agents, employees, successors and assigns to enter upon, across, over, in and under any portion of the Property for the purpose of changing, correcting, or otherwise modifying the grade or drainage channels of the Property so as to improve the drainage of water. Reasonable efforts will be made to use this easement so as not to disturb the uses of the Owners, the Association and Declarant, as applicable, to the extent possible; to prosecute such drainage work promptly and expeditiously; and to restore any areas affected by such work to a slightly and usable condition as soon as reasonably possible following such work. Declarant, or its officers, agents, employees, successors and assigns must inform and obtain the approval of the Board of Directors prior to undertaking such drainage work, which approval will not be unreasonably withheld.

16.7. Declarant's Right Incident to Construction. Declarant, for itself and its successors and assigns, hereby retains a right and easement of ingress and egress over, in, upon, under and across the Common Area and the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incident to the construction of the improvements on the Property or other real property owned by Declarant; provided, however, that no such rights will be exercised by Declarant in such a way as to unreasonably interfere with the occupancy, use, enjoyment or access to an Owner's Lot by that Owner or his family, tenants, employees, guests, or invitees.

16.8. Easements Deemed Created. All conveyances of Lots hereafter made, whether by Declarant or otherwise, will be construed to grant and reserve the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument for such conveyance.

ARTICLE 17. CLUB PROPERTY

17.1. Club Property. The golf course planned by Declarant will be privately owned and operated by the Club and is not a part of the Common Area hereunder. Nothing in this Declaration nor any designation or reference on any Plat, Final Development Plan, Black Rock Document, planned unit development document, approval document issued by any government entity, drawing,

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advertisement, brochure, or any other document in any way relating to Community or any oral representation of any agent of the Declarant or any party related to Declarant shall give rise to any right, whether expressed or implied, of an Owner to play golf, have access to the Club Property, become a member of the Club, require the Declarant to construct or maintain the area as a Club Property, or otherwise impose any obligation of Declarant relating in any way to the proposed Club Property. All arrangements relating to any Owner and the planned Club Property must be in writing signed by the owner of the planned Club Property and shall be separate and apart from the Black Rock Documents. The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used. By way of example, but not limitation, the Club has the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots, to terminate any or all use rights, to change, eliminate or cease operation of any or all of the Club Property, to transfer any or all of its rights to the Club Property or the operation thereof to anyone and on any terms which it deems appropriate, to limit the availability of use privileges, and to require the payment of a purchase price, initiation fee, membership deposit, dues and other charges for the use privileges. **OWNERSHIP OF A LOT OR ANY PORTION OF THE PROPERTY OR MEMBERSHIP IN THE ASSOCIATION DOES NOT GIVE ANY VESTED RIGHT OR EASEMENT, PRESCRIPTIVE OR OTHERWISE, TO USE THE CLUB PROPERTY, OR TO ACQUIRE A MEMBERSHIP IN THE CLUB AND DOES NOT GRANT ANY OWNERSHIP OR MEMBERSHIP INTEREST IN THE CLUB OR THE CLUB PROPERTY.**

17.2. Acknowledgments. Each Owner, by acceptance of a deed or recorded contract of sale to a Lot acknowledges:

17.2.1. That privileges to use the Club Property shall be subject to the terms and conditions of the membership documents for the Club, as the same may be amended from time-to-time (the "Membership Plan Documents"). Acquisition of a membership in the Club requires the payment of a membership deposit, and the membership dues, fees and charges. These amounts shall be determined by the Club as set forth in the Membership Plan Documents for the Club. Notwithstanding the fact that the Club Property is open space or a recreation area for purposes of applicable zoning ordinances and regulations, each Owner, by acquisition of title to a Lot, releases and discharges forever the Declarant, the Club and their partners, officers, directors, managers, employees, agents and affiliates, from: (1) any claim that the Club Property is, or must be, owned and/or operated by the Association or the Declarant, and (2) any claim that the Owners are entitled to use the Club Property by virtue of their ownership of a Lot without submitting a membership deposit, and paying dues, fees and charges established by the Club from time-to-time, and complying with the terms and conditions of the Membership Plan Documents for the Club.

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Each Owner and the Association shall jointly and severally indemnify, defend, hold harmless and reimburse on demand the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates and their successors and assigns, against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, including, but not limited to, interest, penalties, attorney's fees and legal assistant fees and disbursements (even if incident to any appeals), that the Declarant, its partners, employees, agents, directors, shareholders, officers and affiliates shall incur or suffer, which arise out of, result from, or relate to any claim that because the Club Property is deemed to be open space or a recreation area for purposes of applicable zoning ordinances and regulations, the Club Property must be owned and/or operated by the Association or the Declarant and/or that Owners may use the Club Property without acquiring a membership in the Club pursuant to the Club's Membership Plan Documents and paying the membership contribution or membership deposit, and dues, fees and charges established by the Club from time-to-time.

17.2.2. That any entry upon the Club Property without permission of the Club may be deemed a trespass, and each Owner shall refrain from, and shall cause all occupants of such Owner's Lot, their guests and invitees to refrain from, any unauthorized entry upon the Club Property.

17.2.3. That the proximity of Lots and Common Area to the Club Property results in certain foreseeable risks, including the risk of damage or injury from errant golf balls, and that each Owner's use and enjoyment of his or her Lot and the Common Area may be limited as a result, and that neither the Association, Declarant nor the Club shall have any obligation to take steps to remove or alleviate such risks, nor shall they have any liability to an Owner or occupant of any Lot, their guests or invitees, for damage or injury resulting from errant golf balls being hit upon any Lots or Common Area. Each Owner expressly assumes the risks referenced herein.

17.2.4. That the Club and its designees may add to, remove or otherwise modify the landscaping, trees, and other features of the Club Property, including changing the location, configuration, size and elevation of bunkers, fairways and greens and constructing fences, and that neither the Club, Declarant, nor the Association, shall have any liability to Owner as a result of such modifications to the Club Property.

17.2.5. That there are no express or implied easements over the Club Property for view purposes, and no guarantee or representation is made by Declarant or any other person that any view over and across the Club Property will be preserved without impairment, and that neither the Club, Declarant nor the Association shall have any obligation to take any

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actions, including pruning or thinning trees or other landscaping, to preserve, create, or enhance views over the Club Property.

17.2.6. That no representations or warranties which are inconsistent with this Section, either verbal or written, have been made or are made by Declarant or the Association or by any person acting on behalf of any of the foregoing.

17.3. Assumption of Risk and Indemnification. Each Owner by its purchase of a Lot expressly assumes the risks associated with the Club Property (regardless of whether the Owner is using the Club Property) and agrees that neither Declarant, the Club, the Association, nor any of their affiliates or agents nor any other entity designing, construction, owning or managing the Club Property or planning or constructing the Owner's Lot shall be liable to Owner or any other person claiming any loss or damage, including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, loss of view, noise pollution, or other visual or audible offenses, or trespass or any other alleged wrong or entitlement to remedy based upon, due to, arising from or otherwise related to the proximity of the Owner's Lot or Common Area to the Club Property, including, without limitation, any claim arising, in whole or in part, from the negligence of Declarant, or any other entity designing, constructing, owning or managing the Club Property or planning or constructing the Owner's Lot. Owner hereby agrees to indemnify and hold harmless Declarant and any other entity owning or managing the Club Property against any and all claims by Owner's guests and invitees.

ARTICLE 18. INSURANCE AND FIDELITY BONDS

18.1. Authority to Purchase. All insurance policies relating to the Common Area will be purchased by the Board of Directors or its duly authorized agent, on behalf of the Association. The Board of Directors, the Manager and Declarant will not be liable for failure to obtain any coverage required by this Article or for any loss or damage resulting from such failure if such failure is due to the unavailability of such coverage from reputable insurance companies, or if such coverage is available only at demonstrably unreasonable costs.

18.2. General Insurance Provisions. All such insurance coverage obtained by the Board of Directors will be governed by the following provisions:

18.2.1. As long as Declarant owns any Lot, Declarant will be named as an additional insured on all such policies in the same manner as any other Owner.

18.2.2. The deductible, if any, on any insurance policy purchased by the Board of Directors may be treated as a Common Expense payable from Annual Assessments or Special Assessments, allocable to all of the

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Lots or to only some of the Lots, if the claims for damages arise from the negligence of particular Owners, or if the repairs benefit only particular Owners, or as an item to be paid from working capital reserves established by the Board of Directors. The Board of Directors shall, in its sole discretion, determine the treatment and allocation of any deductible.

18.3. Physical Damage Insurance on Common Area. The Association will obtain insurance for improvements within the Common Area with such coverages, limits, deductibles and other terms and conditions as the Board may determine from time to time.

18.4. Liability Insurance. The Association will obtain a comprehensive policy of public liability insurance and property damage insurance with such coverages, limits, deductibles, and terms and conditions as the Board of Directors may from time to time determine. Such insurance shall provide coverage to each member of the Board of Directors, the Association, the Manager, and their respective employees, agents, and all persons acting as agents against any liability to the public or the Owners, their guest, invitees, tenants, agents, and employees arising in connection with the ownership, operation, maintenance, or use of the Common Area, streets and roads and the Black Rock Utilities within Community and any other areas under the control of the Association. Declarant will be included in the coverage as an additional insured, but only for claims and liabilities arising in connection with the ownership, existence, use or management of the Common Area.

The Board of Directors will review the coverage limits from time-to-time, but generally, the Board will carry such amounts of insurance usually required by private institutional mortgage lenders on projects similar to Community, and in no event will such coverage be less than \$1,000,000.00 for all claims for bodily injury or property damage arising out of one occurrence.

18.5. Fidelity Insurance. Fidelity bonds or insurance coverage will be maintained by the Association to protect against dishonest acts on the part of its officers, directors, trustees, and employees, and on the part of those who are responsible for handling the funds of or administered by the Association. In addition, if responsibility for handling funds is delegated to a Manager, such bonds or insurance coverage will be required for the Manager and its officers, employees, and agents, as applicable. Such fidelity bonds or insurance coverage will name the Association as an obligee or insured and will be written in such amount as the Board may determine appropriate.

18.6. Provisions Common to Physical Damage Insurance, Liability Insurance and Fidelity Insurance. Any insurance coverage obtained by the Association under the preceding provisions of this Article will be subject to the following provisions and limitations:

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18.6.1. Named Insured: The named insured under any such policies will include Declarant, until all of the Lots in the Community have been conveyed, and the Association.

18.6.2. Owner as Insured: Each Owner will be an insured person with respect to liability arising out of the Owner's interest in the Common Area or membership in the Association.

18.6.3. Authorized Representative: The Association, or its authorized representative is hereby appointed as attorney-in-fact for the Owners and will have exclusive authority to negotiate losses on Owners behalf under such policies.

18.6.4. Personal Liability Insurance of Officers and Directors. To the extent obtainable at reasonable cost, appropriate officers' and directors' personal liability insurance will be obtained by the Association to protect the officers and Directors from personal liability in relation to their duties and responsibilities in acting as such officers and directors on behalf of the Association.

18.6.5. Worker's Compensation Insurance. The Association will obtain worker's compensation or similar insurance with respect to its employees, if any, in the amounts and forms as may now or hereafter be required by law.

18.6.6. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it may deem appropriate with respect to the Association's responsibilities and duties.

18.6.7. Insurance Obtained by Owners. Each Owner will have the right to obtain insurance for such Owner's benefit, at such Owner's expense, covering the Owner's Lot and Improvement, personal property and personal liability. However, no insurance coverage obtained by an Owner will operate to decrease the amount which the Board of Directors, on behalf of all Owners, may realize under any policy maintained by the Board, otherwise effect any insurance coverage obtained by the Association or cause the diminution or termination of that coverage. Any such insurance obtained by an Owner will include a waiver of the particular insurance company's right to subrogation against Declarant, the Board of Directors, the Association, the Manager, and other Owners.

ARTICLE 19.

ASSOCIATION AS ATTORNEY-IN-FACT

Each and every Owner hereby irrevocably constitutes and appoints the Association as such Owner's true and lawful attorney-in-fact in such Owner's name, place, and stead for the purpose of dealing with the Improvements on the Common Area upon damage or destruction as provided in Article 20 or a

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complete or partial taking as provided in Article 21 below. Acceptance by any grantee of a deed or other instrument of conveyance from Declarant or from any Owner will constitute appointment of the Association as attorney-in-fact as provided in this Article. As attorney-in-fact, the Association will have full and complete authorization, right, and power to make, execute and deliver any contract, assignment, deed, waiver, or other instrument with respect to the interest of any Owner that may be necessary or appropriate to exercise the powers granted to the Association as attorney-in-fact.

**ARTICLE 20.
DAMAGE OR DESTRUCTION**

20.1. Damage or Destruction of Common Area.

20.1.1. Estimate of Damages or Destruction. As soon as practical after an event causing damage to or destruction of any part of the Common Area, unless Association, in its sole judgment, believes the cost to repair such damage or destruction will not exceed \$2,000, Association will obtain an estimate or estimates that it deems reliable and complete of the costs of repair and reconstruction of that part of the Common Area so damaged or destroyed. "Repair and reconstruction" as used in this Article will mean restoring the damaged or destroyed improvements to substantially the same condition in which they existed prior to the damage or destruction.

20.1.2. Repair and Reconstruction. As soon as practical after obtaining estimates, the Association will diligently pursue to completion the repair and reconstruction of the damaged or destroyed improvements. As attorney-in-fact for the Owners, the Association may take any and all necessary or appropriate action to effect repair and reconstruction, and no consent or other action by any Owner will be necessary. Assessments of the Association will not be abated during the period of insurance adjustments and repair and reconstruction.

20.1.3. Funds for Repair and Reconstruction. The proceeds received by the Association from any hazard insurance will be used for the purpose of repair, replacement and reconstruction. If the proceeds of the insurance are insufficient to pay the estimated or actual cost of such repair and reconstruction, the Association may, pursuant to Section 14.4., levy, assess and collect in advance from all Owners, a Special Assessment sufficient to provide funds to pay such estimated or actual costs of repair and reconstruction. Further levies may be made in like manner if the amounts collected prove insufficient to complete the repair and reconstruction.

20.1.4. Disbursement of Funds for Repair and Reconstruction. The insurance proceeds held by the Association and the amounts received from the Special Assessments provided for in Section 14.4

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constitute a fund for the payment of the costs of repair and reconstruction after casualty. It will be deemed that the first money disbursed in payment for the costs of repair and reconstruction will be made from Insurance proceeds, and the balance from the Special Assessments. If there is a balance remaining after payment of all costs of such repair and reconstruction, such balance will be distributed to the Owners in proportion to the contributions each Owner made as a Special Assessment to the Association under Section 14.4, or, if no Special Assessments were made, then in proportionate shares on the basis of the allocation to the Owners of Common Expenses under Section 14.3.2; first to any First Mortgagee that has paid any such Assessment pursuant to Section 23.1.2. below, and then to the Owners, as their interests appear.

20.1.5. Decision Not to Rebuild. If Declarant elects, during the Period of Declarant Control, and at all other times, Owners representing at least 67% of the votes in the Association agree in writing, not to repair and reconstruct damage to the Common Area and no alternative improvements are authorized, then and in that event the Property will be restored to its natural state and maintained as an undeveloped portion of the Common Area by Association in a neat and attractive condition, and any remaining Insurance proceeds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses under Section 14.3.2, first to any First Mortgagee that has paid any such Assessment pursuant to Section 23.1.2. below, and then to the Owners, as their interests appear.

20.2. Danger or Destruction Affecting Lots. In the event of damage or destruction to the Improvements located on any Lot, the Owner thereof will promptly repair and restore the damaged Improvements to their condition prior to such damage or destruction. If such repair or restoration is not commenced within 180 days from the date of such damage or destruction, or if repair and reconstruction is commenced and then abandoned for a period of more than 90 days, then the Association may, after notice and hearing as provided in the Bylaws, impose a fine accruing at the rate of \$100.00 per day or such other rate imposed by the Board in compliance with the Bylaws, charged against the Owner of the Lot until repair and reconstruction is commenced, unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner's control. Such fine will be a Default Assessment and lien against the Lot as provided in Section 14.5 above.

ARTICLE 21. CONDEMNATION

21.1. Rights of Owners. Whenever all or part of the Common Area is taken or conveyed in lieu of and under threat of condemnation by any authority having the power of condemnation or eminent domain, each Owner will be entitled to notice of the taking, but the Association will act as attorney-in-fact for

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all Owners in the proceedings incident to the condemnation proceeding, unless otherwise prohibited by law.

21.2. Partial Condemnation; Distribution of Award; Reconstruction.

The award made for such taking will be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Area on which Improvements have been constructed, then, unless, within 60 days after such taking, Declarant so elects, during the Period of Declarant Control, and, at all other times, Owners representing at least 67% of the votes in the Association so agree, the Association will restore or replace such Improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board of Directors. If such Improvements are to be repaired or restored, the provisions in Article 20 above regarding the disbursements of funds with respect to casualty damage or destruction that is to be repaired will apply. If the taking does not involve any Improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds will be distributed in proportionate shares on the basis of the allocation to the Owners of the Common Expenses under Section 14.3.2., first to any First Mortgagee that has paid any such Assessment pursuant to Section 23.1.2. below, and then to the Owners, as their interests appear.

21.3. Complete Condemnation. If all of Community is taken, condemned, sold, or otherwise disposed of in lieu of or in avoidance of condemnation, then the regime created by this Declaration will terminate, and the portion of the condemnation award attributable to the Common Area will be distributed as provided in Section 21.2.

**ARTICLE 22.
EXPANSION AND WITHDRAWAL**

22.1. Reservation of Right to Expand. Declarant reserves the right, but will not be obligated, to expand the effect of this Declaration to include all or part of the Expansion Property. The consent of the existing Lot Owners and Mortgagees will not be required for any such expansion, and Declarant may proceed with such expansion without limitation at its sole option. Declarant will have the unilateral right to transfer to any other person this right to expand by an instrument duly recorded. Declarant will pay all taxes and other governmental assessments relating to the Expansion Property as long as Declarant is the owner of such property.

22.2. Completion of Expansion. When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until such notice is given, Declarant retains the right to designate additional property as Expansion Property.

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22.3. Declaration of Annexation. Any expansion of the Project may be accomplished by recording a Declaration of Annexation and one or more supplemental Plats in the records of the Recorder of Kootenai County, Idaho, before the expiration of the Period of Declarant Control. The Declaration of Annexation will describe the real property to be annexed, submitting it to these Covenants and provide for voting rights and Assessment allocations consistent with Article 5 and 14 of this Declaration. The proportionate voting interest and allocation of Common Expenses for the other Lots will be adjusted accordingly. Such Declaration of Annexation will not require the consent of Owners, the Association, or the Board of Directors. Any such expansion will be effective upon the filing for record of such Declaration of Annexation, unless otherwise provided therein. The expansion may be accomplished in stages by successive supplements or in one supplemental expansion.

22.4. Withdrawal of Property. Declarant reserves the right to withdraw from the jurisdiction of these Covenants any parcel of the Property (including the Expansion Property), provided, however, that no parcel may be withdrawn after it has been conveyed to an Owner.

ARTICLE 23. MORTGAGEE PROTECTIONS

23.1. First Mortgagees' Rights.

23.1.1. Payment of Taxes and Insurance. First Mortgagees, jointly or singly, may pay taxes or other charges which are in default and which may or have become a charge against any of the Common Area or Improvements thereon, and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for the Common Area. First Mortgagees making such payments will be owed immediate reimbursement from the Association.

23.1.2. Cure of Delinquent Assessments. A First Mortgage will be entitled to cure any delinquency of the Owner of the Lot encumbered by the First Mortgagee in the payment of Assessments. In that event, the First Mortgagee will be entitled to obtain a release from any lien perfected by reason of such delinquency.

23.2. Title Taken by First Mortgagee. Any First Mortgagee who obtains title to a Lot pursuant to the remedies provided in the First Mortgage, including foreclosure of the First Mortgage, will be liable for all Assessments which become due and payable on or after the date title to the Lot vests in the First Mortgagee under the statutes of Idaho governing foreclosures, whether judicial or nonjudicial. Except as provided in the Act, such First Mortgagee will not be liable for any unpaid dues and charges attributable to the Lot which were due and payable prior to the date such title vests in the First Mortgagee.

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**ARTICLE 24.
ENFORCEMENT OF COVENANTS**

24.1. Violations Deemed a Nuisance. Every violation of the Black Rock Documents, including without limitation, this Declaration, is deemed to be a nuisance and is subject to all the remedies allowed at law or equity against any person responsible for such violation.

24.2. Compliance. Each Owner or other occupant of any part of the Property will comply with the provisions of this Declaration and the Black Rock Documents as the same may be amended from time to time.

24.3. Failure to Comply. Failure to comply with Black Rock Documents will be grounds for an action to recover damages or for injunctive relief to cause any such violation to be remedied, or both. Reasonable notice and an opportunity for a hearing as provided in the Bylaws will be given to the delinquent party prior to commencing any legal proceedings.

24.4. Who May Enforce. Any action to enforce the Black Rock Documents may be brought by Declarant, the Board, or the Manager in the name of the Association on behalf of the Owners. If, after a written request from an aggrieved Owner, none of the foregoing persons or entities commences an action to enforce the Black Rock Documents, then the aggrieved Owner may bring such an action.

24.5. Nonexclusive Remedies. All the remedies set forth herein are cumulative and not exclusive.

24.6. No Waiver. The failure of the Board of Directors, Declarant, the Manager, or any aggrieved Owner to enforce the Black Rock Documents in any one or more instances will not be deemed a waiver of the right to do so for any subsequent violations or of the right to enforce any other part of the Black Rock Documents at any future time.

24.7. No Liability. No member of the Board of Directors, the Declarant, the Manager or any Owner will be liable to any other Owner for the failure to enforce any of the Black Rock Documents at any time.

24.8. Recovery of Costs. If legal assistance is obtained to enforce any of the provisions of the Black Rock Documents, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of the Black Rock Documents or the restraint of violations of the Black Rock Documents, the prevailing party will be entitled to recover all costs incurred by it in such action, including reasonable attorneys' fees and legal assistants' fees as may be incurred, or if suit is brought, as may be determined by the court.

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**ARTICLE 25.
RESOLUTION OF DISPUTES**

25.1. Hearing. If any dispute or question arises between Members, or between Members and the Association, or relating to the interpretation, performance or nonperformance, violation, or enforcement of the Black Rock Documents, such dispute or violation may be subject to a hearing and determination by the Board in accordance with the procedures set forth in the Bylaws.

25.2. Arbitration. All claims, disputes and other matters in question arising out of, or relating to this Declaration, which are not resolved in accordance with 25.1, or the breach of any provision of this Declaration shall be decided by binding arbitration in accordance with the Idaho Uniform Arbitration Act. This agreement to arbitrate shall be specifically enforceable under Idaho law. The arbitration shall be held in Coeur d'Alene, Idaho, unless the parties agree otherwise. In no event shall a demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matters in question would be barred by the applicable statute of limitations. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

25.2.1. Selection of Arbitrators. Each party shall select one arbitrator within ten (10) days of the receipt of demand for arbitration. Within twenty (20) days after the receipt of a demand for arbitration, the two (2) selected arbitrators shall jointly select a third arbitrator to participate in the arbitration. If either party fails to select an arbitrator within the ten (10) day period, or if the two (2) selected arbitrators fails to agree on a third arbitrator, a party may make immediate application to the District Court for the First Judicial District of the State of Idaho located in Kootenai County for appointment of a second or third arbitrator, as the case may be.

**ARTICLE 26.
DURATION OF THESE COVENANTS AND AMENDMENT**

26.1. Term. This Declaration and any amendments or supplements herein remain in effect from the date of recordation until the 50th anniversary of the date this Declaration is first recorded in the office of the Recorder of Kootenai County, Idaho. Thereafter this Declaration, as such may be amended from time to time, will be automatically extended for five successive periods of 10 years each, unless otherwise terminated or modified as provided below.

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26.2. Amendment. Subject to Section 22.4, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property as follows:

26.2.1. Prior to Sale of Lots. Prior to the sale of any Lots (excluding any sale to a Successor Declarant), Declarant (including a Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property by recording in the records of Kootenai County, Idaho, a document signed by the Declarant stating the action taken.

26.2.2. After Sale of Lots but During Period of Declarant Control. After the sale of a Lot (excluding a sale to a Successor Declarant) but before expiration of the Period of Declarant Control, Declarant (including Successor Declarant) may terminate, extend, modify, amend or revoke this Declaration as to the whole or any portion of the Property. A copy of the document stating the action intended to be taken by the Declarant and a notice of the Owners' rights under this Section shall be mailed to each Owner by first class mail, postage prepaid, to the address of the Owner on the records of Association. Unless written objection is received by Declarant from the Owners holding 80% or more of the votes within 30 days of the mailing of the notice to the Owners, the action proposed to be taken by the Declarant shall be considered approved and shall become final. The Declarant shall then record in the records of Kootenai County, Idaho, a document stating the action taken, together with a certificate certifying that notice was given to the Owners as required herein and that fewer than 80% of the Owners objected to the action.

26.2.3. After the Period of Declarant Control. After the Period of Declarant Control, this Declaration, or any provision of it, may be terminated, extended, modified or amended, or revoked as to the whole or any portion of the Property upon the written consent of Owners holding 67% or more of the votes in the Association. Any document will be immediately effective upon recording in the records of Kootenai County, Idaho, a copy of such executed and acknowledged by the necessary number of Owners, or alternatively, upon the recording in the records of Kootenai County, Idaho, of a copy of the document together with a certificate signed by an officer of the Association stating that the required number of consents of Owners were obtained.

26.3. Declarant's Approval. Notwithstanding the provisions of Section 22.2, no termination, extension, modification or amendment of this Declaration will be effective in any event during the Period of Declarant Control unless the written approval of Declarant is first obtained.

26.4. County Approval. Notwithstanding the provisions of Section 22.2, the covenants contained herein which are required to be

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contained herein by the Conditions of Approval of the Order of Decision of Case No. PUD-037-99 by the Kootenai County Commissioners, dated December 20th, 2000, may not be amended, modified, or revoked without such agency approvals as may be required pursuant to the ordinances, rules and regulations of Kootenai County then in effect.

26.5. Effect of Amendments. Amendments made pursuant to this Section will be appurtenant to each Lot and shall inure to the benefit of and be binding upon all Owners, their families, tenants, guests, invitees and employees, and their respective heirs, successors, and assigns. Joinder of the First Mortgagees shall not be required in order to effect an amendment.

ARTICLE 27. MISCELLANEOUS PROVISIONS

27.1. Severability. This Declaration, to the extent possible, will be construed or reformed so as to give validity to all of its provisions. Any provisions of this Declaration found to be invalid or unenforceable by a court of competent jurisdiction, will be ineffective to the extent of such invalidity or unenforceability without affecting the remainder of this Declaration, which shall continue in full force and effect the same as if the invalid or unenforceable provision had not been included in the first instance.

27.2. Construction. In interpreting words in this Declaration, unless the context otherwise provides or requires, the singular will include the plural, the plural will include the singular, and references to the masculine, the feminine or the neuter each include the other.

27.3. Paragraph Headings. Paragraph headings are included only for purposes of convenient reference, and shall not affect the meaning or interpretation of this Declaration.

27.4. No Waiver. No waiver by the Association or the Board shall be inferred from the failure of either, at any time or under any conditions, to give notice of default, or to exercise or delay in exercising any right or remedy hereunder. No waiver will be effective unless it is in writing and signed by the President or Vice President of the Board on behalf of the Association. The fact that a condition or provision of this Declaration may have been once waived does not preclude future enforcement of that condition or provision.

27.5. Limitation of Liability. Neither the Declarant or the Association nor any partner, director, officer, manager or member of either will be liable to any party for any action or for any failure to act with respect to any matter arising by, through or under the Black Rock Documents if the action or failure to act was made in good faith. The Association will indemnify all of the officers and Board members with respect to any act taken in their official capacity to the extent

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provided in this Declaration and by law and in the Articles of Incorporation and Bylaws.

27.6. Conflicts Between Documents. In case of conflict between this Declaration and the Articles of Incorporation or the Bylaws, this Declaration will control. In case of conflict between the Articles of Incorporation and the Bylaws, the Articles of Incorporation will control.

27.7. Assignment. Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Recorder of Kootenai County, Idaho.

Dated this 30th day of July, 2001.

DECLARANT

Black Rock Development, Inc.
an Idaho Corporation

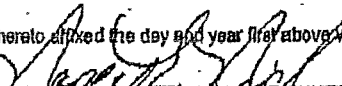
By: 
Marshall R. Chesrown, President

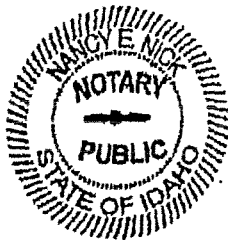
STATE OF IDAHO

County of Kootenai

30th day of July, 2001, Nancy E. Nick, a notary public in and for the State of Idaho, do hereby certify that on this day of July, 2001, personally appeared before me Marshall R. Chesrown, who, being by me first duly sworn, declared that he is the President of Black Rock Development, Inc., that he signed the foregoing document as President of Black Rock Development, Inc., and that he is authorized to sign on behalf of Black Rock Development, Inc.

Witness my hand and official seal hereto affixed the day and year first above written.


Notary Public in and for the State of Idaho
Residing at 502-7-005-111
My Commission Expires 10-31-2003



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CONFORM
COPY

EXHIBIT A

Black Rock P.U.D.
(Main Parcel)

A parcel of land being portions of Sections 8, 9, 16 and 17, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter, said Section 8, from which an aluminum cap monument marking the Southwest corner thereof bears S $01^{\circ}15'27''$ W a distance of 2629.95 feet; thence, S $86^{\circ}49'26''$ E along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pipe with a 2-1/2" brass cap stamped "BLACKROCK POB INC PLS 6602 2001", being a point on the southerly Right-of-Way line of Lotts Day Road, and the True POINT-OF-BEGINNING for this description.

Thence, in an easterly direction, along said southerly Right-of-Way line, the following courses:

1. S $86^{\circ}49'26''$ E a distance of 198.63 feet to the beginning of a curve concave southerly, having a radius of 2048.74 feet, the long chord of which bears S $84^{\circ}42'59''$ E a distance of 150.67 feet;
2. Easterly along said curve, through a central angle of $4^{\circ}12'53''$, a distance along the arc of 150.71 feet;
3. S $82^{\circ}36'33''$ E a distance of 219.42 feet to the beginning of a curve concave northerly, having a radius of 2069.79 feet, the long chord of which bears S $85^{\circ}42'53''$ E a distance of 224.26 feet;
4. Easterly along said curve, through a central angle of $6^{\circ}12'40''$, a distance along the arc of 224.37 feet;
5. S $88^{\circ}49'13''$ E a distance of 122.94 feet to the beginning of a curve concave southerly, having a radius of 3303.74 feet, the long chord of which bears S $87^{\circ}25'01''$ E a distance of 161.80 feet;
6. Easterly along said curve, through a central angle of $2^{\circ}48'23''$, a distance along the arc of 161.82 feet;
7. S $86^{\circ}00'50''$ E a distance of 572.94 feet to the beginning of a curve concave southerly, having a radius of 517.08 feet, the long chord of which bears S $73^{\circ}11'16''$ E a distance of 229.58 feet;
8. Easterly along said curve, through a central angle of $25^{\circ}39'08''$, a distance along the arc of 231.50 feet;
9. S $60^{\circ}21'42''$ E a distance of 119.87 feet to the beginning of a curve concave northerly, having a radius of 543.06 feet, the long chord of which bears S $72^{\circ}38'05''$ E a distance of 230.88 feet;
10. Easterly along said curve, through a central angle of $24^{\circ}32'46''$, a distance along the arc of 232.65 feet;

Exhibit "A"

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11. S 84°54'28" E a distance of 101.79 feet to the beginning of a curve concave northerly, having a radius of 669.49 feet, the long chord of which bears N 80°34'21" E a distance of 115.70 feet;
 12. Easterly along said curve, through a central angle of 29°02'23", a distance along the arc of 339.32 feet to the beginning of a compound curve concave northwesterly, having a radius of 963.99 feet, the long chord of which bears N 57°03'24" E a distance of 301.47 feet;
 13. northeasterly along said curve, through a central angle of 17°59'31", a distance along the arc of 302.71 feet;
 14. N 48°03'38" E a distance of 209.94 feet to the beginning of a curve concave southeasterly, having a radius of 1850.37 feet, the long chord of which bears N 51°47'40" E a distance of 241.00 feet;
 15. northeasterly along said curve, through a central angle of 7°28'04", a distance along the arc of 241.17 feet;
 16. N 55°31'42" E a distance of 299.98 feet to the beginning of a curve concave southerly, having a radius of 245.53 feet, the long chord of which bears N 87°04'50" E a distance of 256.96 feet;
 17. Easterly along said curve, through a central angle of 63°06'15", a distance along the arc of 270.42 feet;
 18. S 61°22'03" E a distance of 209.46 feet to the beginning of a curve concave northerly, having a radius of 331.50 feet, the long chord of which bears S 86°05'41" E a distance of 277.33 feet;
 19. Easterly along said curve, through a central angle of 49°27'16", a distance along the arc of 286.13 feet to the beginning of a compound curve concave northwesterly, having a radius of 815.89 feet, the long chord of which bears N 55°52'19" E a distance of 375.56 feet;
 20. northeasterly along said curve, through a central angle of 26°36'45", a distance along the arc of 378.96 feet;
 21. N 42°33'56" E a distance of 725.95 feet to the beginning of a curve concave northwesterly, having a radius of 1730.84 feet, the long chord of which bears N 40°54'16" E a distance of 100.35 feet;
 22. northeasterly along said curve, through a central angle of 3°19'20", a distance along the arc of 100.36 feet to the intersection of said southerly Right-of-Way line with the East line of the Northeast Quarter, said section 8;
- thence, N 03°45'34" E along said Base line a distance of 415.50 feet to the northwest corner of Government Lot 5, said Section 9;
- thence, N 89°21'52" E along the North line thereof a distance of 298.90 feet;

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thence, S 87°41'59" E, continuing along said line, a distance of 956.51 feet to the northeast corner thereof;

thence, S 02°05'41" W along the East line thereof a distance of 880.08 feet;

thence, S 84°22'57" E a distance of 1291.20 feet to a point on the East line of Government Lot 6, said Section 9;

thence, S 02°18'52" W along said East line a distance of 858.52 feet to the southwest corner thereof;

thence, S 03°26'57" W along the East line of the Southwest Quarter, said Section 9, a distance of 2619.39 feet to the South Quarter corner thereof;

thence, S 03°45'42" W along the East line of the Northwest Quarter, said Section 16, a distance of 957.91 feet to the intersection of said East line with the northerly Right-of-Way line of Rockford Bay Road.

Thence, southwesterly along said northerly Right-of-Way line, the following courses:

1. S 42°19'24" W a distance of 361.23 feet to the beginning of a curve concave northwesterly, having a radius of 1061.97 feet, the long chord of which bears S 47°13'12" W a distance of 181.30 feet;
2. southwesterly along said curve, through a central angle of 9°47'36", a distance along the arc of 181.52 feet;
3. S 52°07'00" W a distance of 117.96 feet to the beginning of a curve concave northwesterly, having a radius of 472.14 feet, the long chord of which bears S 61°57'30" W a distance of 161.40 feet;
4. southwesterly along said curve, through a central angle of 19°41'00", a distance along the arc of 162.20 feet;
5. S 71°48'00" W a distance of 127.88 feet to the beginning of a curve concave southeasterly, having a radius of 997.24 feet, the long chord of which bears S 65°26'05" W a distance of 221.13 feet;
6. southwesterly along said curve, through a central angle of 12°43'51", a distance along the arc of 221.58 feet;
7. S 59°04'09" W a distance of 107.76 feet to the beginning of a curve concave northwesterly, having a radius of 1186.70 feet, the long chord of which bears S 64°44'52" W a distance of 234.84 feet;

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8. southwesterly along said curve, through a central angle of $11^{\circ}21'25''$, a distance along the arc of 235.22 feet;

9. $S 70^{\circ}25'34'' W$ a distance of 521.16 feet to the beginning of a curve concave northerly, having a radius of 2716.47 feet, the long chord of which bears $S 75^{\circ}32'44'' W$ a distance of 484.79 feet;

10. westerly along said curve, through a central angle of $10^{\circ}14'20''$, a distance along the arc of 485.44 feet to the beginning of a compound curve concave northerly, having a radius of 1075.71 feet, the long chord of which bears $S 83^{\circ}17'43'' W$ a distance of 98.73 feet;

11. southwesterly along said curve, through a central angle of $5^{\circ}15'38''$, a distance along the arc of 98.77 feet;

12. $S 85^{\circ}55'32'' W$ a distance of 372.25 feet to the intersection of said northerly Right-of-Way line with the West line of the Northwest Quarter, said section 16.

thence, $N 03^{\circ}17'00'' E$ along said West line a distance of 946.77 feet;

thence $N 86^{\circ}45'21'' W$ a distance of 658.85 feet;

thence, $N 03^{\circ}15'14'' E$ a distance of 1309.07 feet to the South line, said Section 8;

thence, $N 86^{\circ}44'32'' W$ along said line a distance of 1979.13 feet to the South Quarter corner, said section 8;

thence, $N 86^{\circ}55'57'' W$ along the South line of the Southwest Quarter said section 8 a distance of 1321.88 feet;

thence, $N 03^{\circ}24'29'' E$ a distance of 1308.70 feet;

thence, $N 86^{\circ}56'26'' W$ a distance of 991.92 feet;

thence, $N 03^{\circ}14'13'' E$ a distance of 1314.32 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 656.9 acres, more or less.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:
(Sales Office Parcel)

COMMENCING at the afore-mentioned South Quarter corner, said Section 9; thence, $S 03^{\circ}46'32'' W$ a distance of 1033.03 feet to an iron rod monument marking the intersection of the West line of Tax Parcel No. 3910 with the southerly Right-of-Way line of Rockford Bay Road, the True POINT-OF-BEGINNING for this description;

thence, along the perimeter of said Tax Parcel No. 3910, the following courses:

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CONFORM
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1. N 43°47'52" E along said Right-of-Way line a distance of 310.24 feet;
2. S 39°25'06" E, leaving said Right-of-Way line, a distance of 123.90 feet;
3. S 39°18'44" E a distance of 124.38 feet;
4. S 06°37'38" W a distance of 30.00 feet;
5. S 57°00'33" W a distance of 290.00 feet;
6. S 37°35'51" W a distance of 240.09 feet;
7. N 03°28'17" E along said West line of Tax Parcel No. 3910 a distance of 346.59 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 2.2 acres, more or less.

Said described combined parcels contain 659.1 acres (gross), less 2.2 acres of Loff's Bay Road and Black Rock Road Rights-of-Way leaving a net area of 656.9 acres, more or less.

**Kootenai County
Property Information**



1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Address: 232820 Unknown
ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 0077000000AA
Tax ID #: 232820
Section: 48N04W08
Instrument: 1939384-
TCA Code: 067000
Legal Description: BLACK ROCK, PTN OF TR A IN CODE AREA 067-000 EX TAX #'S
Census Tract/Block: 002100/2059
Property Class: 438 - Com Imp rural subdiv
Neighborhood Code: 40
Front Feet: 0
Acres: 141.975
Taxes: \$70,363 - 2010

Assessments

Year	Description	Value
2010	Market Land Value	\$681,480
2010	Market Impr Value	\$8,767,000
2010	Market Total Value	\$9,448,480
2010	Taxable Value	\$9,448,480

Land Information

Land Description: 438 - Com Imp rural subdiv
Zoning: County-RUR - RURAL
Sewer Avail.:
Waterfront: 0

Property Picture



Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
0	C01	RESTROOM	38 Comm imp on 16	\$25,000
0	C01	COMCNPYG	38 Comm imp on 16	\$2,000
0	C01	GOLFCRSE	38 Comm imp on 16	\$8,740,000
	L00		16 Rural com sub	\$681,480

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EXHIBIT B

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1



KT **KOOTENAI TITLE**
 MAKE A REQUEST FOR THE BEST

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
 Phone: (208)667-9431 Fax: (208)208-666-0410

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**Kootenai County
Property Information**



1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Address: 18934 S Club House Dr
Coeur D Alene ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 0077800000CB
Tax ID #: 254144
Section: 48N04W16
Instrument: 1922479-
TCA Code: 087000
Legal Description: BLACK ROCK 7TH ADD, PTN OF TAX #22163 IN TCA 087-000 [IN SEC 16 & 17]
Census Tract/Block: 002100/2059
Property Class: 416 - Rural commercial sub
Neighborhood Code: 40
Front Feet: 0
Acres: 30.735
Taxes: \$1,371 - 2010

Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
	L00		16 Rural com sub	\$184,411

Assessments

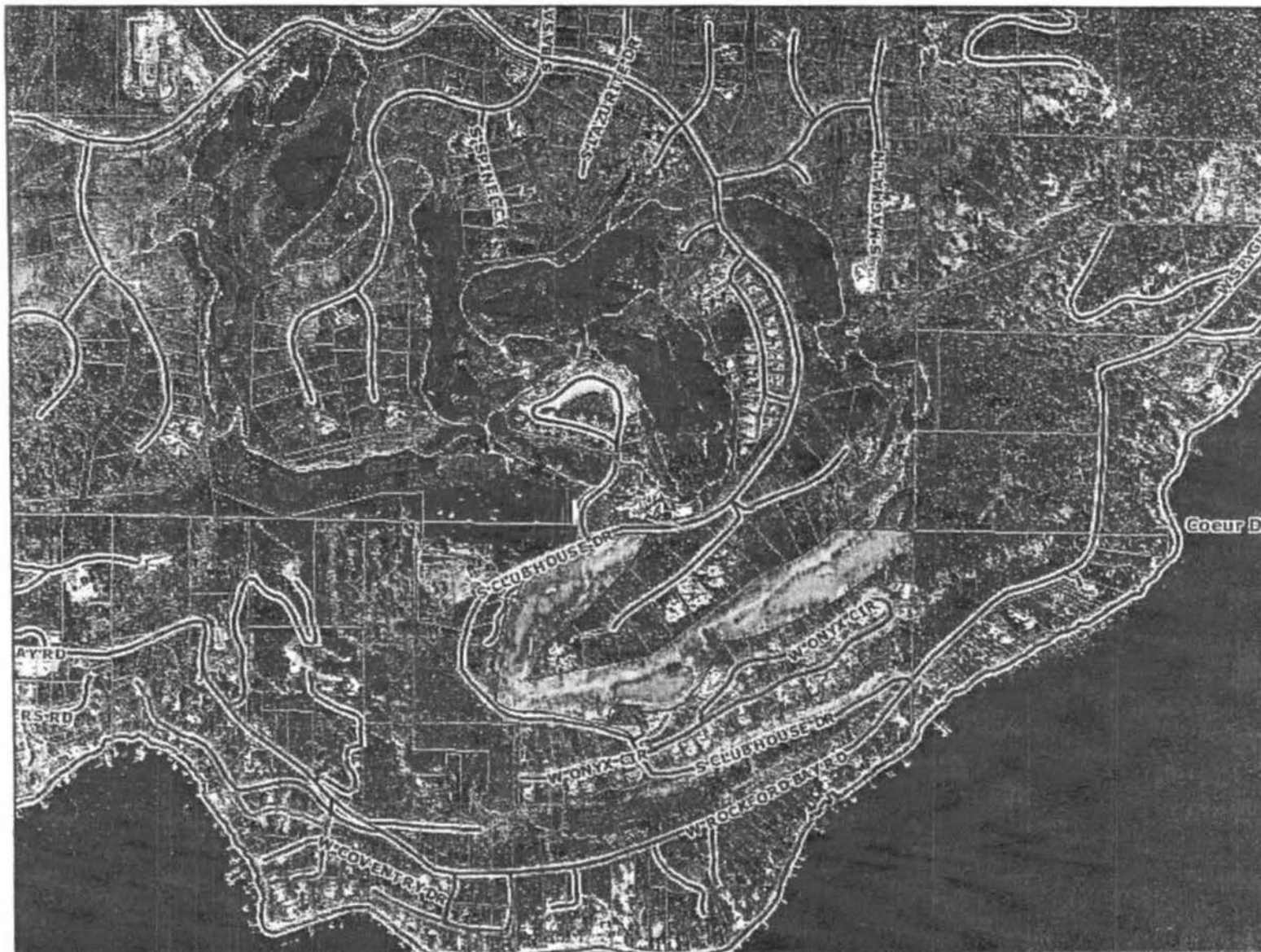
Year	Description	Value
2010	Market Land Value	\$184,411
2010	Market Impr Value	\$0
2010	Market Total Value	\$184,411
2010	Taxable Value	\$184,411

Land Information

Land Description: 416 - Rural commercial sub
Zoning: County-RESRES - RESTRICTED RESIDENTIAL
Sewer Avail.:
Waterfront: 0

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KT KOOTENAI TITLE
MAKE A REQUEST FOR THE BEST

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

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**Kootenai County
Property Information**



1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Address: 0
ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 0077800000CA
Tax ID #: 254143
Section: 48N04W09
Instrument: 1922479-
TCA Code: 067000
Legal Description: BLACK ROCK 7TH ADD, PTN OF TAX #22163 IN TCA 067-000 [IN SEC 9]
Census Tract/Block: 002100/2061
Property Class: 438 - Com Imp rural subdiv
Neighborhood Code: 40
Front Feet: 0
Acres: 26.144
Taxes: \$1,367 - 2010

Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
0	C01	UTLSTOR	38 Comm Imp on 16	\$25,000
0	C01	COMCNPYG	38 Comm Imp on 16	\$2,000
	L00		16 Rural com sub	\$156,864

Assessments

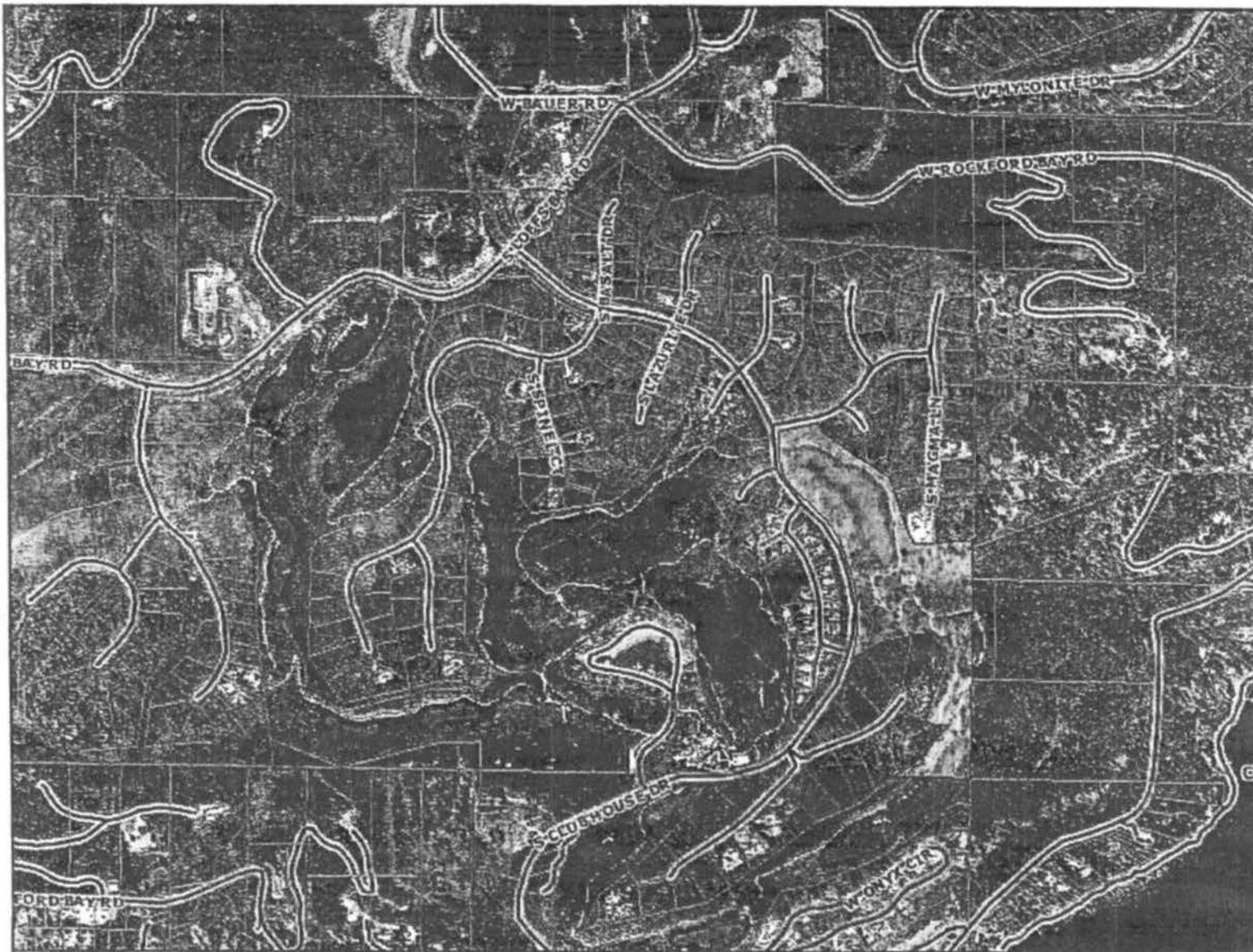
Year	Description	Value
2010	Market Land Value	\$156,864
2010	Market Impr Value	\$27,000
2010	Market Total Value	\$183,864
2010	Taxable Value	\$183,864

Land Information

Land Description: 438 - Com Imp rural subdiv
Zoning: County-RUR - RURAL
Sewer Avail.:
Waterfront: 0

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KT **KOOTENAI TITLE**
 MAKE A REQUEST FOR THE BEST

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
 Phone: (208)667-9431 Fax: (208)208-666-0410

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**Kootenai County
Property Information**

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 00776008001A
Tax ID #: 246618
Section: 48N04W09
Instrument: 1939384-
TCA Code: 067000
Legal Description: BLACK ROCK 5TH ADD, LT 1 BLK 8 EX TAX #20559
Census Tract/Block: 002100/2059
Property Class: 438 - Com Imp rural subdiv
Neighborhood Code: 40
Front Feet: 0
Acres: 5.123
Taxes: \$25,209 - 2010

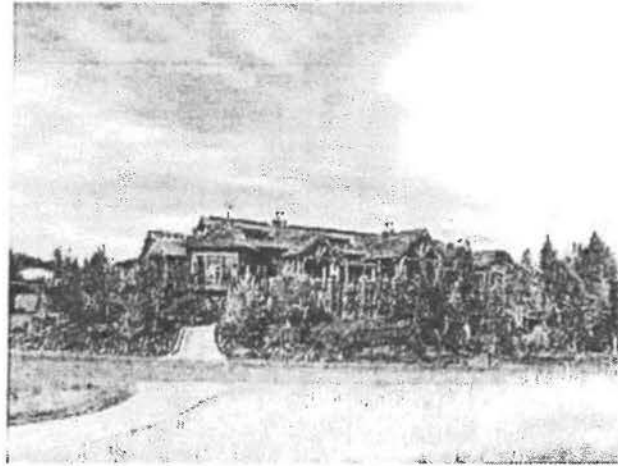
Assessments

Year	Description	Value
2010	Market Land Value	\$435,455
2010	Market Impr Value	\$2,954,471
2010	Market Total Value	\$3,389,926
2010	Taxable Value	\$3,389,926

Land Information

Land Description: 438 - Com Imp rural subdiv
Zoning: County-RUR - RURAL
Sewer Avail.: Sewer
Waterfront: 0

Property Picture



Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
0	C01	CLUB	38 Comm Imp on 16	\$2,649,471
0	C01	MISC	38 Comm Imp on 16	\$30,000
0	C01	MISC	38 Comm Imp on 16	\$275,000
	LO0		16 Rural com sub	\$435,455

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KT **KOOTENAI TITLE**
 MAKE A REQUEST FOR THE BEST

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
 Phone: (208)667-9431 Fax: (208)208-666-0410

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**Kootenai County
Property Information**



1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Address: 17666 S Club House Dr
Coeur D Alene ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 48N04W098575
Tax ID #: 232318
Section: 48N04W09
Instrument: 1922417-
TCA Code: 067000
Legal Description: W 150' OF TAX #13242 [IN SW-SE]
Census Tract/Block: 002100/2059
Property Class: 416 - Rural commercial sub
Neighborhood Code: 40
Front Feet: 0
Acres: 2.291
Taxes: \$120 - 2010

Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
	L00		16 Rural com sub	\$13,746

Assessments

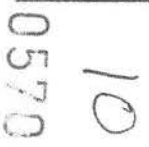
Year	Description	Value
2010	Market Land Value	\$13,746
2010	Market Impr Value	\$0
2010	Market Total Value	\$13,746
2010	Taxable Value	\$13,746

Land Information

Land Description: 416 - Rural commercial sub
Zoning: County-RESRES - RESTRICTED RESIDENTIAL
Sewer Avail.:
Waterfront: 0

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1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

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Kootenai County
Property Information



1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
Phone: (208)667-9431 Fax: (208)208-666-0410

Property Picture



Property Address: 6986 W Rockford Bay Rd
Coeur D Alene ID 83814

Owner Information

Name: Golf Club At Black Rock The
Address: 18168 S Kimberlite Dr
Coeur D Alene ID 83814

Assessor Information

Property ID #: 007700150010
Tax ID #: 232944
Section: 48N04W16
Instrument: 1691892-
TCA Code: 087000
Legal Description: BLACK ROCK, LT 1 BLK 15
Census Tract/Block: 002100/2066
Property Class: 438 - Com Imp rural subdiv
Neighborhood Code: 109
Front Feet: 560
Acres: 2.202
Taxes: \$14,942 - 2010

Assessments

Year	Description	Value
2010	Market Land Value	\$1,769,570
2010	Market Impr Value	\$234,172
2010	Market Total Value	\$2,003,742
2010	Taxable Value	\$2,003,742

Land Information

Land Description: 438 - Com Imp rural subdiv
Zoning: County-RESRES - RESTRICTED RESIDENTIAL
Sewer Avail.: Sewer
Waterfront: Coeur D' Alene 0

Improvement Information

Improvement Type:
Year Built: 0
Stories: 0.00
Heat:
Central Air:
Foundation:
Construction Type:
Total Sq. Ft.:
Finished Sq. Ft.: 0

Value Details

Dwl	Ext	Type	Category	Value
0	C01	GENOFF	38 Comm Imp on 16	\$214,972
0	C01	MISC	38 Comm Imp on 16	\$19,200
	L00		16 Rural com sub	\$869,570
0	L00		16 Rural com sub	\$900,000

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KT KOOTENAI TITLE
 MAKE A REQUEST FOR THE BEST

1450 Northwest Blvd Ste 200 Coeur d'Alene, ID 83814
 Phone: (208)667-9431 Fax: (208)208-666-0410

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DANIEL J. ENGLISH 14P I 2277224000
KOOTENAI CO. RECORDER Page 1 of 14
AAA Date 08/11/2010 Time 17:08:33
REC-REQ OF NORTH IDAHO TITLE INSURA
RECORDING FEE: 49.00
2277224000 DD 4

WHEN RECORDED MAIL TO:

WASHINGTON TRUST BANK
Corporate Banking (320)
P.O. Box 2127
Spokane, WA 99210-2127
6001 - 26955T⁰

NON-MERGER WARRANTY DEED IN LIEU OF FORECLOSURE

GRANTOR, The Club at Black Rock, LLC, an Idaho limited liability company organized and existing under the laws of the State of Idaho, whose current address is P.O. Box 3070, Coeur d'Alene, Idaho 83816, of the County of Kootenai, State of Idaho, for good and valuable consideration, the receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto Washington Trust Bank, a corporation organized and existing under the laws of State of Washington and engaged in the business of banking, whose current address is Corporate Banking, 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington, as GRANTEE, and to Grantee's successors and assigns forever, all of the following described real property located in Kootenai County, State of Idaho, more particularly described as follows, to-wit:

See Exhibit "A" which is attached to this Non-Merger Warranty Deed In Lieu of Foreclosure and made a part hereof as if fully set forth herein.

TOGETHER with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way and appurtenances; all water, water rights, and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property, including without limitation, all minerals, oil, gas, geothermal and similar matters; all assignments of rents and security interest in the rents and personal property.

Commonly known as NNA, Coeur d'Alene, Idaho, 83814, Parcel Nos. 0-0770-000-00A-0, 0-0770-000-00A-B, 0-0778-000-00C-A, 0-0778-000-00C-B, 0-0776-008-001-A, 0-0770-000-00C-C.

("Real Property")

Subject to:

1. Reservations, provisions, covenants, conditions, restrictions, dedications, easements, rights of way, and agreements of record.

EXHIBIT C

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2. General and special taxes and assessments for the year 2009 and for the current year which are not yet due and payable.

Grantor, for itself and its successors and assigns, does hereby covenant and warrant and shall defend the quiet and peaceable possession of said premises by the Grantee, its successors and assigns forever against the lawful claims of all persons.

The true and actual consideration for this Non-Merger Warranty Deed In Lieu of Foreclosure is the agreement of Grantee to accept the delivery of said Deed as the full and unconditional release and cancellation of all debts, liabilities, obligations, costs and charges owed by Grantor to Grantee on the following loans:

1.

- (a) Promissory Note dated June 15, 2004, in the principal amount of Ten Million and no/100 Dollars (\$10,000,000.00), payable to WTB and executed by The Club, which is secured by the Property ("Note [REDACTED]
- (b) Deed of Trust dated June 15, 2004, recorded on June 29, 2004, as Recording No. 1885110, records of Kootenai County, Idaho, executed by The Club ("Deed of Trust No. [REDACTED]

2.

- (a) Promissory Note dated November 19, 2008, in the principal amount of Two Hundred Fifty One Thousand and no/100 Dollars (\$251,000.00), payable to WTB and executed by The Club, which is secured by Personal Property [REDACTED]

3.

- (a) Promissory Note dated May 24, 2009, in the principal amount of One Million and no/100 Dollars (\$1,000,000.00), payable to WTB and executed by The Club and Black Rock Investments, Inc., a Member of The Club, which is secured by the Real Property ("Note [REDACTED]
- (b) Deed of Trust dated April 24, 2009, recorded on May 8, 2009, as Recording No. 2210318000, records of Kootenai County, Idaho, executed by The Club ("Deed of Trust No. [REDACTED]
- (c) Modification of Deed of Trust dated May 24, 2009, recorded on June 23, 2009, as Recording No. 2218082000, records of Kootenai

County, Idaho, executed by The Club and Black Rock Investments, Inc., a Member of The Club, increasing the principal amount of Note No. 87202 to \$1,000,000.00 ("Modification of Deed of Trust No. [REDACTED]")

4. [REDACTED]

- (a) Promissory Note dated May 20, 2010, in the principal amount of One Million Two Hundred Fifty Thousand and no/100 Dollars (\$1,250,000.00), payable to WTB and executed by The Club and Black Rock Investments, Inc., a Member of The Club, which is secured by the Property [REDACTED]
- (b) Deed of Trust dated May 20, 2010, recorded on June 1, 2010, as Recording No. 2267339000, records of Kootenai County, Idaho, executed by The Club and Black Rock Investments, Inc., a Member of The Club (" [REDACTED] ")

Note No. 16724, Note No. 85768, Note No. 87202, and Note No. 88162 are collectively referred to herein as the "Notes." Deed of Trust No. 16724, Deed of Trust No. 87202, and Deed of Trust No. 88162 are collectively referred to herein as the "Deeds of Trust."

This Non-Merger Warranty Deed In Lieu of Foreclosure is absolute in effect and conveys fee simple title to the Real Property to the Grantee and does not operate as a deed of trust, trust conveyance, or security of any kind. Grantor waives, surrenders, and relinquishes any equity of redemption and statutory rights of redemption which Grantor may have in connection with the Real Property and the Deeds of Trust.

This Non-Merger Warranty Deed In Lieu of Foreclosure does not effect a merger of the fee ownership of the Real Property and the liens of the Deeds of Trust, and the Real Property shall remain subject to the liens of the Deeds of Trust. The fee and the liens of the Deeds of Trust shall hereafter remain separate and distinct until and unless the Real Property shall be sold at a foreclosure sale or the liens of the Deeds of Trust are discharged by the Grantee through a recorded written instrument. Grantee reserves its right to foreclose its interest in the Deeds of Trust at any time as to any party with any claim, interest, or lien on the Real Property.


Grantor acknowledges, agrees and understands that Grantor may be joined as a party defendant in a suit to foreclose the Deeds of Trust, and any subordinate liens or encumbrances existing upon the Real Property, and that the agreement of Grantee shall not operate to preclude Grantee from proceeding in any action to enforce the Deeds of Trust but that the agreement of Grantee shall preclude Grantee from obtaining a deficiency judgment on the Notes against Grantor.

Grantor declares that this conveyance is freely and fairly made. Grantor is not acting under any misapprehension as to the legal effect of this Non-Merger Warranty Deed In Lieu of Foreclosure, nor under any duress, undue influence, or misrepresentation of the Grantee, its agents, its attorneys, or any other person.


Possession of the Real Property is hereby surrendered and delivered to the Grantee.

IN WITNESS WHEREOF, the Grantor has hereunto caused this Non-Merger Warranty Deed In Lieu of Foreclosure to be executed in its entity name by its manager and member this 11 day of August, 2010.

THE CLUB AT BLACK ROCK, LLC

By: 
Marshall R. Chesrown, Manager

BLACK ROCK INVESTMENTS, INC.
Member of The Club at Black Rock, LLC

By: 
Marshall R. Chesrown, President

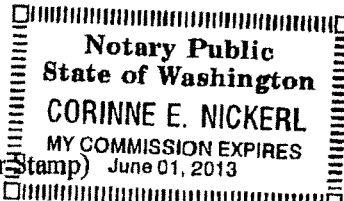
STATE OF WASHINGTON)

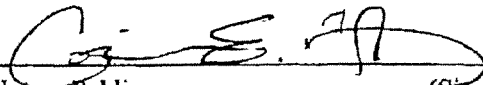
: ss

County of Spokane)

On this 11th day of August, 2010, before me personally appeared MARSHALL R. CHESROWN, to me known to be the Manager of THE CLUB AT BLACK ROCK, LLC, the limited liability company that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

 Notary Public
State of Washington
CORINNE E. NICKERL
MY COMMISSION EXPIRES
June 01, 2013
(Seal or Stamp)


Notary Public (Signature)
Corinne E. Nickerl (Print Name)
My commission expires: 6/01/13

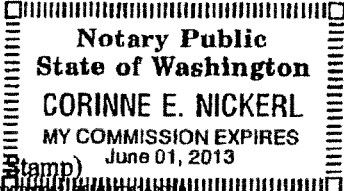
STATE OF WASHINGTON)

: ss

County of Spokane)

On this 11th day of August, 2010, before me personally appeared MARSHALL R. CHESROWN, to me known to be the President of BLACK ROCK INVESTMENTS, INC., a Member of The Club of Black Rock, LLC, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

 Notary Public
State of Washington
CORINNE E. NICKERL
MY COMMISSION EXPIRES
June 01, 2013
(Seal or Stamp)

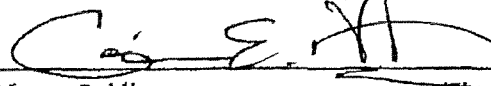

Notary Public (Signature)
Corinne E. Nickerl (Print Name)
My commission expires: 6/01/13

EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-26955
Version 2
UPDATE

PARCEL 1:

TRACT "A", BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGE 299, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK FIFTH ADDITION, RECORDED IN BOOK "J" OF PLATS, PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK SIXTH ADDITION, RECORDED IN BOOK "J" OF PLATS AT PAGE 41, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK GOLF COTTAGES, RECORDED IN BOOK "J" OF PLATS AT PAGE 361, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

AND EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 03 DEGREES 15'27" WEST A DISTANCE OF 2629.95 FEET;

THENCE, SOUTH 86 DEGREES 49'26" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 331.34 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 8802 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOFFS BAY ROAD.

THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 5610.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 8802 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 63 DEGREES 51'52" EAST A DISTANCE OF 310.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 401.63 FEET;

THENCE, SOUTH 73 DEGREES 54'33" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'29" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 333.56 FEET;

THENCE, NORTH 79 DEGREES 00'19" WEST A DISTANCE OF 197.86 FEET;

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EXHIBIT "A"
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THENCE, NORTH 72 DEGREES 31'53" WEST A DISTANCE OF 125.21 FEET;

THENCE, NORTH 19 DEGREES 39'16" WEST A DISTANCE OF 89.49 FEET;

THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.13 FEET;

THENCE, NORTH 59 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;

THENCE, NORTH 58 DEGREES 00'52" EAST A DISTANCE OF 241.31 FEET;

THENCE, NORTH 66 DEGREES 03'38" EAST A DISTANCE OF 81.34 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 2:

A PARCEL OF LAND BEING PORTIONS OF TRACT C OF THE PLAT OF BLACK ROCK SEVENTH ADDITION, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "J" OF PLATS AT PAGE 119, RECORDS OF KOOTENAI COUNTY, IDAHO AND LOT 1, BLOCK 11, PLAT OF BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "I" OF PLATS AT PAGE 290, RECORDS OF KOOTENAI COUNTY, IDAHO, LOCATED IN PORTIONS OF SECTIONS 9, 16 & 17, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN BEING MONUMENTED BY A FOUND 1/2 IN. REBAR PER CP&F 1027778, FROM WHICH THE CENTER CORNER BEARS SOUTH 86 DEGREES 49'26" EAST A DISTANCE OF 2852.62 FEET MONUMENTED BY A 5/8 IN. REBAR PER CP&F 1027777;

THENCE, SOUTH 86 DEGREES 49'26" EAST A DISTANCE OF 331.34 FEET TO A 2 1/2 IN. BRASS CAP MARKED "BLACK ROCK P.O.B. INC PLS 6602 2001.;

THENCE, SOUTH 62 DEGREES 14'42" EAST A DISTANCE OF 6404.76 FEET TO A 5/8 IN. REBAR MARKED INC PLS 6602, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE, SOUTH 33 DEGREES 29'18" WEST A DISTANCE OF 270.18 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 47 DEGREES 54'02" WEST A DISTANCE OF 519.54 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 55 DEGREES 50'03" WEST A DISTANCE OF 242.82 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 25 DEGREES 44'13" WEST A DISTANCE OF 248.08 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

Order No. 6001-28955

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EXHIBIT "A"
LEGAL DESCRIPTION

THENCE, NORTH 80 DEGREES 06'04" EAST A DISTANCE OF 825.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 55 DEGREES 40'39" EAST A DISTANCE OF 895.73 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 69 DEGREES 11'12" EAST A DISTANCE OF 291.79 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 55 DEGREES 58'55" EAST A DISTANCE OF 550.43 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 36 DEGREES 57'49" EAST A DISTANCE OF 203.08 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 61 DEGREES 52'27" WEST A DISTANCE OF 122.64 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 20 DEGREES 09'50" EAST A DISTANCE OF 477.63 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 41 DEGREES 25'12" WEST A DISTANCE OF 176.13 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 80 DEGREES 47'16" WEST A DISTANCE OF 314.01 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 62 DEGREES 38'47" WEST A DISTANCE OF 222.77 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE THE FOLLOWING EIGHT COURSES;

1. THENCE, A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 980.00 FEET, AN ARC LENGTH OF 581.28 FEET, A DELTA ANGLE OF 33 DEGREES 59'05", AND WHOSE LONG CHORD BEARS NORTH 01 DEGREES 32'57" EAST A DISTANCE OF 572.80 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

2. THENCE, NORTH 15 DEGREES 26'30" WEST A DISTANCE OF 142.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

3. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 590.00 FEET, AN ARC LENGTH OF 304.02 FEET, A DELTA ANGLE OF 29 DEGREES 31'27" AND WHOSE LONG CHORD BEARS NORTH 30 DEGREES 12'19" WEST A DISTANCE OF 300.67 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

4. THENCE, NORTH 44 DEGREES 58'03" WEST A DISTANCE OF 205.12 FEET TO A

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EXHIBIT "A"
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PLASTIC CAP MARKED INC PLS 6602;

5. THENCE, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 330.00 FEET, AN ARC LENGTH OF 285.54 FEET, A DELTA ANGLE OF 49 DEGREES 34'34" AND WHOSE LONG CHORD BEARS NORTH 20 DEGREES 10'46" WEST A DISTANCE OF 276.71 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

6. THENCE, NORTH 04 DEGREES 36'32" EAST A DISTANCE OF 91.80 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

7. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 19.94 FEET, A DELTA ANGLE OF 04 DEGREES 57'58" AND WHOSE LONG CHORD BEARS NORTH 02 DEGREES 07'32" EAST A DISTANCE OF 19.93 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

8. THENCE, ALONG A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 28.03 FEET, A DELTA ANGLE OF 80 DEGREES 17'12" AND WHOSE LONG CHORD BEARS NORTH 39 DEGREES 47'09" EAST A DISTANCE OF 25.79 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, ALONG THE SOUTHERLY RIGHT OF WAY OF SLATE DRIVE, NORTH 79 DEGREES 55'45" EAST A DISTANCE OF 207.97 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 590.00 FEET, AN ARC LENGTH OF 32.83 FEET, A DELTA ANGLE OF 03 DEGREES 11'19" AND WHOSE LONG CHORD BEARS NORTH 78 DEGREES 20'05" EAST A DISTANCE OF 32.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, LEAVING SAID SOUTHERLY RIGHT OF WAY, SOUTH 23 DEGREES 03'05" EAST A DISTANCE OF 67.97 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 54 DEGREES 40'40" EAST A DISTANCE OF 522.14 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 16 DEGREES 29'04" EAST A DISTANCE OF 365.98 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 22 DEGREES 49'51" EAST A DISTANCE OF 106.28 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, NORTH 87 DEGREES 37'40" EAST A DISTANCE OF 384.46 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 9;

THENCE, ALONG SAID WEST LINE, SOUTH 03 DEGREES 26'57" WEST A DISTANCE OF 1573.86 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9, MONUMENTED BY AN ALUMINUM CAP PER CP&F 1065178;

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THENCE, SOUTH ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 16,
SOUTH 03 DEGREES 45'42" WEST A DISTANCE OF 162.41 FEET TO A PLASTIC CAP
MARKED INC PLS 6602;

THENCE, LEAVING SAID SECTION LINE, NORTH 85 DEGREES 30'43" WEST A DISTANCE
OF 64.34 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 55 DEGREES 47'40" WEST A DISTANCE OF 455.21 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 62 DEGREES 09'23" WEST A DISTANCE OF 205.73 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 69 DEGREES 11'12" WEST A DISTANCE OF 395.67 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 80 DEGREES 38'52" WEST A DISTANCE OF 98.47 FEET TO A PLASTIC
CAP MARKED INC PLS 6602;

THENCE, SOUTH 82 DEGREES 42'34" WEST A DISTANCE OF 148.48 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 31 DEGREES 44'30" WEST A DISTANCE OF 306.49 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 44 DEGREES 21'33" WEST A DISTANCE OF 190.04 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 66 DEGREES 30'11" WEST A DISTANCE OF 88.26 FEET TO A PLASTIC
CAP MARKED INC PLS 6602;

THENCE, SOUTH 85 DEGREES 55'40" WEST A DISTANCE OF 197.46 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 13 DEGREES 12'08" WEST A DISTANCE OF 47.63 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 90 DEGREES 00'00" WEST A DISTANCE OF 60.07 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, NORTH 70 DEGREES 52'26" WEST A DISTANCE OF 78.18 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 47 DEGREES 24'08" WEST A DISTANCE OF 67.22 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 15 DEGREES 12'34" WEST A DISTANCE OF 65.50 FEET TO A PLASTIC

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EXHIBIT "A"
LEGAL DESCRIPTION

CAP MARKED INC PLS 9367;

THENCE, SOUTH 88 DEGREES 19'00" EAST A DISTANCE OF 215.79 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, SOUTH 13 DEGREES 12'08" EAST A DISTANCE OF 74.75 FEET TO A PLASTIC CAP MARKED INC PLS 9367, SAID POINT BEING ON THE CENTERLINE OF TONALITE COURT;

THENCE, ALONG SAID CENTERLINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET, AN ARC LENGTH OF 53.05 FEET, A DELTA ANGLE OF 25 DEGREES 19'48" AND WHOSE LONG CHORD BEARS SOUTH 64 DEGREES 59'40" WEST A DISTANCE OF 52.62 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, CONTINUING ALONG SAID CENTERLINE, SOUTH 52 DEGREES 19'55" WEST A DISTANCE OF 8.92 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY, A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 150.01 FEET, A DELTA ANGLE OF 37 DEGREES 22'10" AND WHOSE LONG CHORD BEARS NORTH 56 DEGREES 21'10" WEST A DISTANCE OF 147.37 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 60.00 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 322.41 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE LEFT, HAVING A RADIUS OF 710.00 FEET, AN ARC LENGTH OF 136.54 FEET, A DELTA ANGLE OF 11 DEGREES 01'08" AND WHOSE LONG CHORD BEARS NORTH 80 DEGREES 32'49" WEST A DISTANCE OF 136.33 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 88 DEGREES 03'23" WEST A DISTANCE OF 120.96 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET, AN ARC LENGTH OF 173.13 FEET, A DELTA ANGLE OF 45 DEGREES 05'19" AND WHOSE LONG CHORD BEARS NORTH 63 DEGREES 30'43" WEST A DISTANCE OF 168.70 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 40 DEGREES 58'04" WEST A DISTANCE OF 6.59 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, LEAVING SAID NORTHERLY RIGHT OF WAY, NORTH 11 DEGREES 23'10" EAST A DISTANCE OF 163.22 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

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THENCE, NORTH 43 DEGREES 15'28" WEST A DISTANCE OF 59.51 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 15 DEGREES 50'44" EAST A DISTANCE OF 344.39 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 152.89 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 66 DEGREES 51'37" EAST A DISTANCE OF 30.00 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 171.89 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 69 DEGREES 08'14" EAST A DISTANCE OF 613.70 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 83.75 FEET, A DELTA ANGLE OF 20 DEGREES 51'46" AND WHOSE LONG CHORD BEARS NORTH 79 DEGREES 34'07" EAST A DISTANCE OF 83.29 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, SOUTH 80 DEGREES 00'00" EAST A DISTANCE OF 189.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 8, BLACK ROCK FIFTH ADDITION, ACCORDING TO THE PLAT RECORDED IN BOOK "J" OF PLATS, AT PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 83 DEGREES 15'27" WEST A DISTANCE OF 2629.95 FEET;

THENCE, SOUTH 86 DEGREES 49'28" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 331.34 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 6602 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOFFS BAY ROAD.

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Version 2
UPDATE

EXHIBIT "A"
LEGAL DESCRIPTION

THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 5810.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 6602 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 63 DEGREES 51'52" EAST A DISTANCE OF 310.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 401.63 FEET;

THENCE, SOUTH 73 DEGREES 54'33" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'29" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 333.56 FEET;

THENCE, NORTH 79 DEGREES 00'19" WEST A DISTANCE OF 197.86 FEET;

THENCE, NORTH 72 DEGREES 31'53" WEST A DISTANCE OF 125.21 FEET;

THENCE, NORTH 19 DEGREES 39'16" WEST A DISTANCE OF 99.49 FEET;

THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.13 FEET;

THENCE, NORTH 59 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;

THENCE, NORTH 58 DEGREES 09'52" EAST A DISTANCE OF 241.31 FEET;

THENCE, NORTH 66 DEGREES 03'38" EAST A DISTANCE OF 81.34 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

A PARCEL OF LAND BEING A PORTION OF TRACT "C", PLAT OF BLACK ROCK, SITUATED IN SECTIONS 9 & 16, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 3, BLOCK 8, BLACK ROCK FIFTH ADDITION, BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE, FROM WHICH AN IRON PIPE WITH A BRASS CAP, 2 1/2 IN. DIAMETER, MARKED "BLACK ROCK P.O.B. INC PLS 6602 2001" BEARS NORTH 65 DEGREES 18'06" WEST A DISTANCE OF 8004.92 FEET;

THENCE, LEAVING SAID RIGHT OF WAY, SOUTH 86 DEGREES 59'30" EAST A DISTANCE OF 40.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID KIMBERLITE DRIVE;

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THENCE, ALONG SAID RIGHT OF WAY LINE, THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, AN ARC LENGTH OF 220.08 FEET, AND A DELTA OF 50 DEGREES 26'17" WITH A CHORD THAT BEARS SOUTH 28 DEGREES 13'38" WEST A DISTANCE OF 213.04 FEET TO A POINT;
2. SOUTH 53 DEGREES 26'46" WEST A DISTANCE OF 97.42 FEET TO A POINT;
3. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 20.48 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS SOUTH 16 DEGREES 17'30" WEST A DISTANCE OF 205.35 FEET TO A POINT;
4. SOUTH 20 DEGREES 51'46" EAST A DISTANCE OF 16.95 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 90 DEGREES 00'00" WITH A CHORD THAT BEARS SOUTH 65 DEGREES 51'46" EAST A DISTANCE OF 28.28 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF CLUBHOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 69 DEGREES 08'14" WEST A DISTANCE OF 80.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE;

THENCE, ALONG SAID WESTERLY RIGHT OF WAY LINE THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 90 DEGREES 00'00" WITH A CHORD THAT BEARS NORTH 24 DEGREES 08'14" EAST A DISTANCE OF 28.28 FEET TO A POINT;
2. NORTH 20 DEGREES 51'46" WEST A DISTANCE OF 16.95 FEET TO A POINT;
3. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 272.36 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS NORTH 16 DEGREES 17'30" EAST A DISTANCE OF 253.67 FEET TO A POINT;
4. NORTH 53 DEGREES 26'46" EAST A DISTANCE OF 97.42 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 184.86 FEET, AND A DELTA OF 50 DEGREES 26'17" WITH A CHORD THAT BEARS NORTH 28 DEGREES 13'38" EAST A DISTANCE OF 178.95 FEET TO THE TRUE POINT OF BEGINNING.

DANIEL J. ENGLISH 14P I 2277226000
KOOTENAI CO. RECORDER Page 1 of 14
AAA Date 08/11/2010 Time 17:08:33
REC-REQ OF NORTH IDAHO TITLE INSURA
RECORDING FEE: 49.00
2277226000 SC 4

WHEN RECORDED MAIL TO:

WASHINGTON TRUST BANK
Corporate Banking (320)
P.O. Box 2127
Spokane, WA 99210-2127
601-2695576

ASSIGNMENT OF DECLARANT RIGHTS

Black Rock Planned Unit Development
Kootenai County, Idaho

10th This Assignment of Declarant's Rights (the "Assignment") is made as of this day of August, 2010, by and between Black Rock Development, Inc., an Idaho corporation, whose current address is P.O. Box 3070, Coeur d'Alene, Idaho 83816, of the County of Kootenai, State of Idaho ("Assignor"), as Declarant under the Declaration of Covenants, Conditions and Restrictions for Black Rock Planned Unit Development, recorded on July 31, 2001, as Recording No. 1689309, records of Kootenai County, Idaho, and all addenda and amendments thereto recorded under Recording Nos. 1690505, 1704857, 1706231, 1722879, 1731135, 1733028, 1747017, 1749192, 1752276, 1755905, 1768918, 1803139, 1859226, 1876953, 1880211, 1880212, 1888578, 1905749, 1905750, 1905751, 1922480, 1964748, 2042782000, 2093261000, 2093262000, 2141889000, 2165881000, 2222061000, and 2222544000 (collectively referred to herein as the "Declaration") associated with that certain development located in Kootenai County, Idaho, and known as Black Rock, and Washington Trust Bank, a corporation organized and existing under the laws of State of Washington and engaged in the business of banking, whose current address is Corporate Banking, 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington ("Assignee").

EXHIBIT D

0589

RECITALS

A. Assignor is the developer and/or partial owner of real property known as Black Rock, located in Kootenai County, Idaho, legally described on Exhibits "A," "B," and "C" attached hereto ("Black Rock").

B. Black Rock is subject to the terms and conditions contained in the Declaration.

C. Assignee desires to assign all of its rights as Declarant under the Declaration to Assignor, and Assignor agrees to accept such assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

ASSIGNMENT

1. Assignment of Rights. Assignor transfers and assigns to Assignee all its rights and interests as the Declarant under the Declaration. Assignee accepts all such rights and interests as the Declarant under the Declaration, and assumes all obligations of the Declarant thereunder.

2. Governing Law. This Assignment shall be governed and construed in accordance with Idaho law with venue in Kootenai County.

3. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same Assignment.

4. Authority of Parties. Each person executing this Assignment on behalf of a party represents and warrants that they have the full power and authority to execute this Assignment on behalf of that party, and that no further approval of any kind is necessary to bind the parties hereto.

5. Successors and Assigns. Each of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and assigns.

IN WITNESS WHEREOF, the Assignor and Assignee have duly executed this Assignment on the date first written above.

ASSIGNOR:

BLACK ROCK DEVELOPMENT, INC.

By: [Signature]
Its: president

ASSIGNEE:

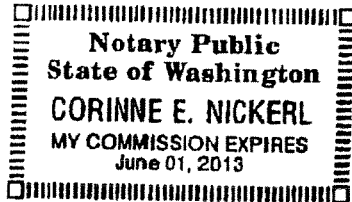
WASHINGTON TRUST BANK

By: [Signature]
Its: SVP

STATE OF Washington)
) ss
County of Spokane)

On this 10th day of August 2010 before me, the undersigned, a Notary Public in and for the State of Washington duly commissioned and sworn, personally appeared Marshall R. Chesrown, to me known to be the President, of Black Rock Development, Inc., an Idaho corporation, the corporation that executed the foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the instrument.

GIVEN under my hand and official seal this 10th day of August 2010.

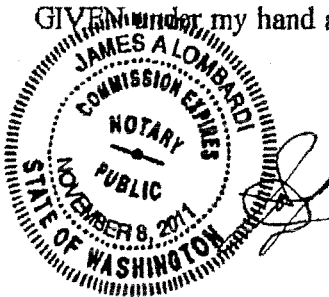


Corinne E. Nickert
Notary Public for the State of WA
Residing at Spokane, WA
My Commission expires 6/01/13

STATE OF WASHINGTON)
) ss
County of SPOKANE)

On this 10th day of August 2010 before me, the undersigned, a Notary Public in and for the State of WASHINGTON duly commissioned and sworn, personally appeared DEAN OBERST, to me known to be the SENIOR VICE PRESIDENT, of Washington Trust Bank, the corporation that executed the foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the trust, for the uses and purposes therein mentioned, and on oath stated that he/she is authorized to execute the instrument.

GIVEN under my hand and official seal this 10th day of August 2010.



James A. Lombardi
Notary Public for the State of WASHINGTON
Residing at SPOKANE, SPOKANE COUNTY
My Commission expires 11-8-2011

EXHIBIT A

to

ASSIGNMENT OF DECLARANT RIGHTS

Black Rock P.U.D.
(Main Parcel)

A parcel of land being portions of Sections 8, 9, 16 and 17, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter, said Section 8, from which an aluminum cap monument marking the Southwest corner thereof bears S 03°15'27" W a distance of 2629.95 feet; thence, S 86°49'26" E along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pipe with a 2-1/2" brass cap stamped "BLACKROCK POB INC PLS 6602 2001", being a point on the southerly Right-of-Way line of Loffs Bay Road, and the True POINT-OF-BEGINNING for this description.

Thence, in an easterly direction, along said southerly Right-of-Way line, the following courses:

1. S 86°49'26" E a distance of 198.63 feet to the beginning of a curve concave southerly, having a radius of 2048.74 feet, the long chord of which bears S 84°42'59" E a distance of 150.67 feet;
2. Easterly along said curve, through a central angle of 4°12'53", a distance along the arc of 150.71 feet;
3. S 82°36'33" E a distance of 219.42 feet to the beginning of a curve concave northerly, having a radius of 2069.79 feet, the long chord of which bears S 85°42'53" E a distance of 224.26 feet;
4. Easterly along said curve, through a central angle of 6°12'40", a distance along the arc of 224.37 feet;
5. S 88°49'13" E a distance of 122.94 feet to the beginning of a curve concave southerly, having a radius of 3303.74 feet, the long chord of which bears S 87°25'01" E a distance of 161.80 feet;
6. Easterly along said curve, through a central angle of 2°48'23", a distance along the arc of 161.82 feet;
7. S 86°00'50" E a distance of 572.94 feet to the beginning of a curve concave southerly, having a radius of 517.08 feet, the long chord of which bears S 73°11'16" E a distance of 229.58 feet;
8. Easterly along said curve, through a central angle of 25°39'08", a distance along the arc of 231.50 feet;
9. S 60°21'42" E a distance of 119.87 feet to the beginning of a curve concave northerly, having a radius of 543.06 feet, the long chord of which bears S 72°38'05" E a distance of 230.88 feet;
10. Easterly along said curve, through a central angle of 24°32'46", a distance along the arc of 232.65 feet;

11. S $84^{\circ}54'28''$ E a distance of 101.79 feet to the beginning of a curve concave northerly, having a radius of 669.49 feet, the long chord of which bears N $80^{\circ}34'21''$ E a distance of 335.70 feet;

12. Easterly along said curve, through a central angle of $29^{\circ}02'23''$, a distance along the arc of 339.32 feet to the beginning of a compound curve concave northwesterly, having a radius of 963.99 feet, the long chord of which bears N $57^{\circ}03'24''$ E a distance of 301.47 feet;

13. northeasterly along said curve, through a central angle of $17^{\circ}59'31''$, a distance along the arc of 302.71 feet;

14. N $48^{\circ}03'38''$ E a distance of 209.94 feet to the beginning of a curve concave southeasterly, having a radius of 1850.37 feet, the long chord of which bears N $51^{\circ}47'40''$ E a distance of 241.00 feet;

15. northeasterly along said curve, through a central angle of $7^{\circ}28'04''$, a distance along the arc of 241.17 feet;

16. N $55^{\circ}31'42''$ E a distance of 299.98 feet to the beginning of a curve concave southerly, having a radius of 245.53 feet, the long chord of which bears N $87^{\circ}04'50''$ E a distance of 256.96 feet;

17. Easterly along said curve, through a central angle of $63^{\circ}06'15''$, a distance along the arc of 270.42 feet;

18. S $61^{\circ}22'03''$ E a distance of 209.46 feet to the beginning of a curve concave northerly, having a radius of 331.50 feet, the long chord of which bears S $86^{\circ}05'41''$ E a distance of 277.33 feet;

19. Easterly along said curve, through a central angle of $49^{\circ}27'16''$, a distance along the arc of 286.13 feet to the beginning of a compound curve concave northwesterly, having a radius of 815.89 feet, the long chord of which bears N $55^{\circ}52'19''$ E a distance of 375.56 feet;

20. northeasterly along said curve, through a central angle of $26^{\circ}36'45''$, a distance along the arc of 378.96 feet;

21. N $42^{\circ}33'56''$ E a distance of 725.95 feet to the beginning of a curve concave northwesterly, having a radius of 1730.84 feet, the long chord of which bears N $40^{\circ}54'16''$ E a distance of 100.35 feet;

22. northeasterly along said curve, through a central angle of $3^{\circ}19'20''$, a distance along the arc of 100.36 feet to the intersection of said southerly Right-of-Way line with the East line of the Northeast Quarter, said section 8;

thence, N $03^{\circ}45'34''$ E along said Ease line a distance of 415.50 feet to the northwest corner of Government Lot 5, said Section 9;

thence, N $89^{\circ}21'52''$ E along the North line thereof a distance of 298.90 feet;

thence, S 87°41'59" E, continuing along said line, a distance of 956.51 feet to the northeast corner thereof;

thence, S 02°05'41" W along the East line thereof a distance of 880.08 feet;

thence, S 84°22'57" E a distance of 1291.20 feet to a point on the East line of Government Lot 6, said Section 9;

thence, S 02°18'52" W along said East line a distance of 858.52 feet to the southwest corner thereof;

thence, S 03°26'57" W along the East line of the Southwest Quarter, said Section 9, a distance of 2619.39 feet to the South Quarter corner thereof;

thence, S 03°45'42" W along the East line of the Northwest Quarter, said Section 16, a distance of 957.91 feet to the intersection of said East line with the northerly Right-of-Way line of Rockford Bay Road.

Thence, southwesterly along said northerly Right-of-Way line, the following courses:

1. S 42°19'24" W a distance of 361.23 feet to the beginning of a curve concave northwesterly, having a radius of 1061.97 feet, the long chord of which bears S 47°13'12" W a distance of 181.30 feet;
2. southwesterly along said curve, through a central angle of 9°47'36", a distance along the arc of 181.52 feet;
3. S 52°07'00" W a distance of 117.96 feet to the beginning of a curve concave northwesterly, having a radius of 472.14 feet, the long chord of which bears S 61°57'30" W a distance of 161.40 feet;
4. southwesterly along said curve, through a central angle of 19°41'00", a distance along the arc of 162.20 feet;
5. S 71°48'00" W a distance of 127.88 feet to the beginning of a curve concave southeasterly, having a radius of 997.24 feet, the long chord of which bears S 65°26'05" W a distance of 221.13 feet;
6. southwesterly along said curve, through a central angle of 12°43'51", a distance along the arc of 221.58 feet;
7. S 59°04'09" W a distance of 107.76 feet to the beginning of a curve concave northwesterly, having a radius of 1186.70 feet, the long chord of which bears S 64°44'52" W a distance of 234.84 feet;

8. southwesterly along said curve, through a central angle of $11^{\circ}21'25''$, a distance along the arc of 235.22 feet;

9. S $70^{\circ}25'34''$ W a distance of 521.16 feet to the beginning of a curve concave northerly, having a radius of 2716.47 feet, the long chord of which bears S $75^{\circ}32'44''$ W a distance of 484.79 feet;

10. westerly along said curve, through a central angle of $10^{\circ}14'20''$, a distance along the arc of 485.44 feet to the beginning of a compound curve concave northerly, having a radius of 1075.71 feet, the long chord of which bears S $83^{\circ}17'43''$ W a distance of 98.73 feet;

11. southwesterly along said curve, through a central angle of $5^{\circ}15'38''$, a distance along the arc of 98.77 feet;

12. S $85^{\circ}55'32''$ W a distance of 372.25 feet to the intersection of said northerly Right-of-Way line with the West line of the Northwest Quarter, said section 16.

thence, N $03^{\circ}17'00''$ E along said West line a distance of 946.77 feet;

thence N $86^{\circ}45'21''$ W a distance of 658.85 feet;

thence, N $03^{\circ}15'14''$ E a distance of 1309.07 feet to the South line, said Section 8;

thence, N $86^{\circ}44'32''$ W along said line a distance of 1979.13 feet to the South Quarter corner, said section 8;

thence, N $86^{\circ}55'57''$ W along the South line of the Southwest Quarter said section 8 a distance of 1321.88 feet;

thence, N $03^{\circ}24'29''$ E a distance of 1308.70 feet;

thence, N $86^{\circ}56'26''$ W a distance of 991.92 feet;

thence, N $03^{\circ}14'13''$ E a distance of 1314.32 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 656.9 acres, more or less.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:
(Sales Office Parcel)

COMMENCING at the afore-mentioned South Quarter corner, said Section 9; thence, S $03^{\circ}46'32''$ W a distance of 1033.03 feet to an iron rod monument marking the intersection of the West line of Tax Parcel No. 3910 with the southerly Right-of-Way line of Rockford Bay Road, the True POINT-OF-BEGINNING for this description;

thence, along the perimeter of said Tax Parcel No. 3910, the following courses:

1. N 43°47'52" E along said Right-of-Way line a distance of 310.24 feet;
2. S 39°25'06" E, leaving said Right-of-Way line, a distance of 123.90 feet;
3. S 39°18'44" E a distance of 124.38 feet;
4. S 06°37'38" W a distance of 30.00 feet;
5. S 57°00'33" W a distance of 290.00 feet;
6. S 37°35'51" W a distance of 240.09 feet;
7. N 03°28'17" E along said West line of Tax Parcel No. 3910 a distance of 346.59 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 2.2 acres, more or less.

Said described combined parcels contain 659.1 acres (gross), less 2.2 acres of Lotts Day Road and Black Rock Road Rights-of-Way leaving a net area of 656.9 acres, more or less.

EXHIBIT B

to

ASSIGNMENT OF DECLARANT RIGHTS

Legal Description of Black Rock North Final Plat

Real property located in Kootenai County, Idaho legally described as follows:

A portion of the Southeast Quarter of Section 4, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Beginning at the Southeast corner of said Section 4, Township 48 North, Range 4 West, Boise Meridian, said point being a 1" iron pipe as shown by Inst. No. 1341198, records of Kootenai County, Idaho;

Thence North $76^{\circ}58'58''$ West along the South line of Section 4 a distance of 1106.63 feet;

Thence North $29^{\circ}07'51''$ East, a distance of 370.78 feet to a 5/8" rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $71^{\circ}05'20''$ East, a distance of 402.07 feet to a 5/8" rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $28^{\circ}40'09''$ East, a distance of 325.54 feet to a 5/8" rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $14^{\circ}25'38''$ West, a distance of 225.75 feet to a 5/8" rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $65^{\circ}00'05''$ East, a distance of 297.30 feet being on the East-West 1/16th line between the SC 1/16th corner on the S 1/16th corner of said Section 4, said point also being a 5/8" rebar with a orange plastic cap, stamped P.L.S 4346;

Thence South $78^{\circ}57'20''$ East along said East-West 1/16th line a distance of 46.31 feet to the South 1/16th corner of said Section 4;

Thence South $00^{\circ}25'56''$ West along the East line of said Section 4 a distance of 1324.52 feet to the Southeast corner of said Section 4 and the POINT OF BEGINNING.

Area being 17.739 acres more or less.

EXHIBIT C

to

ASSIGNMENT OF DECLARANT RIGHTS

Legal Description of The Estates at Black Rock Bay Property

Real property located in Kootenai County, Idaho legally described as follows:

**The West Half of Government Lot 1 and all of Government Lots 2 and 3, Section 9,
Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho.**

WHEN RECORDED MAIL TO:

West Sprague Avenue Holdings, LLC
c/o Washington Trust Bank
Corporate Banking (320)
P.O. Box 2127
Spokane, WA 99210-2127

ACCOMMODATION ONLY

QUIT CLAIM DEED

THE GRANTOR, WASHINGTON TRUST BANK, a corporation organized and existing under the laws of State of Washington and engaged in the business of banking, whose current address is Corporate Banking, 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington, conveys and quit claims to WEST SPRAGUE AVENUE HOLDINGS, LLC, an Idaho limited liability company, whose current address is 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington, all of the following described real property located in Kootenai County, State of Idaho, together with all appurtenances and all after acquired title of the Grantor herein:

See Exhibit "A" which is attached to this Quit Claim Deed and made a part hereof as if fully set forth herein.

TOGETHER with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way and appurtenances; all water, water rights, and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property, including without limitation, all minerals, oil, gas, geothermal and similar matters; all assignments of rents and security interest in the rents and personal property.

Commonly known as NNA, Coeur d'Alene, Idaho, 83814, Parcel Nos. 0-0770-000-00A-0, 0-0770-000-00A-B, 0-0778-000-00C-A, 0-0778-000-00C-B, 0-0776-008-001-A, 0-0770-000-00C-C.

Subject to:

1. Reservations, provisions, covenants, conditions, restrictions, dedications, easements, rights of way, and agreements of record.
2. General and special taxes and assessments for the year 2009 and for the current year which are not yet due and payable.

EXHIBIT E

0604

IN WITNESS WHEREOF, the Grantor has hereunto caused this Quit Claim Deed to be executed this 23 day of August, 2010.

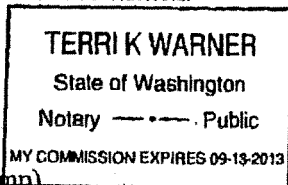
WASHINGTON TRUST BANK

By: *D. Oberst*
Its: Senior Vice President

STATE OF WASHINGTON)
: ss
County of Spokane)

On this 23rd day of August, 2010, before me personally appeared DEAN OBERST, to me known to be the SENIOR VICE PRESIDENT of WASHINGTON TRUST BANK, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.



(Seal or Stamp)

Terri K. Warner
Notary Public (Signature)
TERRI K. WARNER
(Print Name)
My commission expires: 9-13-13

CONFORM
COPY

EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-26955
Version 2
UPDATE

PARCEL 1:

TRACT "A", BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGE 289, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK FIFTH ADDITION, RECORDED IN BOOK "J" OF PLATS, PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK SIXTH ADDITION, RECORDED IN BOOK "J" OF PLATS AT PAGE 41, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK GOLF COTTAGES, RECORDED IN BOOK "J" OF PLATS AT PAGE 361, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

AND EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 03 DEGREES 15'27" WEST A DISTANCE OF 2629.95 FEET;

THENCE, SOUTH 86 DEGREES 49'26" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 331.34 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 8602 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOPE'S BAY ROAD.

THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 5610.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 8602 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 83 DEGREES 51'52" EAST A DISTANCE OF 510.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 401.63 FEET;

THENCE, SOUTH 73 DEGREES 54'33" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'29" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 338.56 FEET;

THENCE, NORTH 79 DEGREES 00'19" WEST A DISTANCE OF 197.86 FEET;

CONFORM
COPY

EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-26055
Version 2
UPDATE

THENCE, NORTH 72 DEGREES 31'53" WEST A DISTANCE OF 125.21 FEET;
THENCE, NORTH 19 DEGREES 29'16" WEST A DISTANCE OF 99.49 FEET;
THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.18 FEET;
THENCE, NORTH 59 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;
THENCE, NORTH 58 DEGREES 09'52" EAST A DISTANCE OF 241.31 FEET;
THENCE, NORTH 66 DEGREES 03'38" EAST A DISTANCE OF 81.84 FEET TO THE TRUE
POINT OF BEGINNING.

PARCEL 2:

A PARCEL OF LAND BEING PORTIONS OF TRACT C OF THE PLAT OF BLACK ROCK SEVENTH ADDITION, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "J" OF PLATS AT PAGE 119, RECORDS OF KOOTENAI COUNTY, IDAHO AND LOT 1, BLOCK 11, PLAT OF BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "I" OF PLATS AT PAGE 299, RECORDS OF KOOTENAI COUNTY, IDAHO, LOCATED IN PORTIONS OF SECTIONS 9, 16 & 17, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN BEING MONUMENTED BY A FOUND 1/2 IN. REBAR PER CP&P 1027778, FROM WHICH THE CENTER CORNER BEARS SOUTH 88 DEGREES 48'26" EAST A DISTANCE OF 2852.62 FEET MONUMENTED BY A 5/8 IN. REBAR PER CP&P 1027777;

THENCE, SOUTH 86 DEGREES 49'26" EAST A DISTANCE OF 331.34 FEET TO A 2 1/2 IN. BRASS CAP MARKED "BLACK ROCK P.O.B. INC PLS 6602 2001;"

THENCE, SOUTH 82 DEGREES 14'42" EAST A DISTANCE OF 6404.76 FEET TO A 5/8 IN. REBAR MARKED INC PLS 6602, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE, SOUTH 33 DEGREES 29'18" WEST A DISTANCE OF 270.18 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 47 DEGREES 54'02" WEST A DISTANCE OF 519.54 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 56 DEGREES 50'03" WEST A DISTANCE OF 242.82 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 25 DEGREES 44'13" WEST A DISTANCE OF 248.08 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

CONFORM
COPY

EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 6001-26855
Version 2
UPDATE

THENCE, NORTH 80 DEGREES 08'04" EAST A DISTANCE OF 825.88 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 55 DEGREES 40'38" EAST A DISTANCE OF 895.73 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 69 DEGREES 11'12" EAST A DISTANCE OF 291.78 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 55 DEGREES 58'55" EAST A DISTANCE OF 550.43 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 36 DEGREES 57'49" EAST A DISTANCE OF 203.08 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 61 DEGREES 52'27" WEST A DISTANCE OF 122.64 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 20 DEGREES 09'50" EAST A DISTANCE OF 477.63 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 41 DEGREES 25'12" WEST A DISTANCE OF 178.13 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 80 DEGREES 47'18" WEST A DISTANCE OF 314.01 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 62 DEGREES 38'47" WEST A DISTANCE OF 222.77 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE THE FOLLOWING RIGHT COURSES;

1. THENCE, A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 980.00 FEET, AN ARC LENGTH OF 581.28 FEET, A DELTA ANGLE OF 33 DEGREES 59'06", AND WHOSE LONG CHORD BEARS NORTH 01 DEGREES 32'57" EAST A DISTANCE OF 572.80 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

2. THENCE, NORTH 15 DEGREES 28'38" WEST A DISTANCE OF 142.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

3. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 590.00 FEET, AN ARC LENGTH OF 304.02 FEET, A DELTA ANGLE OF 29 DEGREES 31'27" AND WHOSE LONG CHORD BEARS NORTH 30 DEGREES 12'19" WEST A DISTANCE OF 300.67 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

4. THENCE, NORTH 44 DEGREES 58'03" WEST A DISTANCE OF 205.12 FEET TO A

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PLASTIC CAP MARKED INC PLS 6602;

5. THENCE, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 390.00 FEET, AN ARC LENGTH OF 285.54 FEET, A DELTA ANGLE OF 40 DEGREES 34'34" AND WHOSE LONG CHORD BEARS NORTH 20 DEGREES 10'40" WEST A DISTANCE OF 276.71 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

6. THENCE, NORTH 04 DEGREES 36'32" EAST A DISTANCE OF 91.80 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

7. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 19.94 FEET, A DELTA ANGLE OF 04 DEGREES 57'58" AND WHOSE LONG CHORD BEARS NORTH 02 DEGREES 07'32" EAST A DISTANCE OF 19.93 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

8. THENCE, ALONG A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 28.03 FEET, A DELTA ANGLE OF 80 DEGREES 17'12" AND WHOSE LONG CHORD BEARS NORTH 39 DEGREES 47'00" EAST A DISTANCE OF 25.79 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, ALONG THE SOUTHERLY RIGHT OF WAY OF SLATE DRIVE, NORTH 70 DEGREES 55'45" EAST A DISTANCE OF 207.97 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 590.00 FEET, AN ARC LENGTH OF 32.83 FEET, A DELTA ANGLE OF 03 DEGREES 11'19" AND WHOSE LONG CHORD BEARS NORTH 78 DEGREES 20'05" EAST A DISTANCE OF 32.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, LEAVING SAID SOUTHERLY RIGHT OF WAY, SOUTH 23 DEGREES 03'06" EAST A DISTANCE OF 67.97 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 54 DEGREES 40'40" EAST A DISTANCE OF 522.14 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 16 DEGREES 29'04" EAST A DISTANCE OF 365.98 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 22 DEGREES 49'01" EAST A DISTANCE OF 106.28 FEET TO A PLASTIC CAP MARKED INC PLS 9307;

THENCE, NORTH 87 DEGREES 37'40" EAST A DISTANCE OF 384.40 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 9;

THENCE, ALONG SAID WEST LINE, SOUTH 03 DEGREES 26'57" WEST A DISTANCE OF 1573.86 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9, MONUMENTED BY AN ALUMINUM CAP PER CP&F 1065178;

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THENCE, SOUTH ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 16,
SOUTH 03 DEGREES 45'42" WEST A DISTANCE OF 182.41 FEET TO A PLASTIC CAP
MARKED INC PLS 6602;

THENCE, LEAVING SAID SECTION LINE, NORTH 86 DEGREES 30'43" WEST A DISTANCE
OF 84.34 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 56 DEGREES 47'40" WEST A DISTANCE OF 455.21 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 62 DEGREES 09'23" WEST A DISTANCE OF 205.73 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 69 DEGREES 11'12" WEST A DISTANCE OF 295.67 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 80 DEGREES 38'52" WEST A DISTANCE OF 98.47 FEET TO A PLASTIC
CAP MARKED INC PLS 6602;

THENCE, SOUTH 82 DEGREES 42'34" WEST A DISTANCE OF 146.48 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 31 DEGREES 44'30" WEST A DISTANCE OF 306.49 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 44 DEGREES 21'33" WEST A DISTANCE OF 190.04 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 66 DEGREES 30'11" WEST A DISTANCE OF 88.26 FEET TO A PLASTIC
CAP MARKED INC PLS 6602;

THENCE, SOUTH 85 DEGREES 55'40" WEST A DISTANCE OF 197.46 FEET TO A
PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 18 DEGREES 12'06" WEST A DISTANCE OF 47.63 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 90 DEGREES 00'00" WEST A DISTANCE OF 60.07 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, NORTH 70 DEGREES 52'26" WEST A DISTANCE OF 78.18 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 47 DEGREES 24'08" WEST A DISTANCE OF 67.22 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 15 DEGREES 12'34" WEST A DISTANCE OF 95.50 FEET TO A PLASTIC

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CAP MARKED INC PLS 9367;

THENCE, SOUTH 88 DEGREES 18'09" EAST A DISTANCE OF 216.70 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, SOUTH 18 DEGREES 12'05" EAST A DISTANCE OF 74.76 FEET TO A PLASTIC CAP MARKED INC PLS 9367, SAID POINT BEING ON THE CENTERLINE OF TONALITE COURT;

THENCE, ALONG SAID CENTERLINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET, AN ARC LENGTH OF 63.05 FEET, A DELTA ANGLE OF 25 DEGREES 19'48" AND WHOSE LONG CHORD BEARS SOUTH 84 DEGREES 59'49" WEST A DISTANCE OF 62.63 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, CONTINUING ALONG SAID CENTERLINE, SOUTH 52 DEGREES 19'55" WEST A DISTANCE OF 8.92 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY, A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 180.01 FEET, A DELTA ANGLE OF 37 DEGREES 22'10" AND WHOSE LONG CHORD BEARS NORTH 58 DEGREES 21'10" WEST A DISTANCE OF 147.37 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 60.00 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 322.41 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE LEFT, HAVING A RADIUS OF 710.00 FEET, AN ARC LENGTH OF 138.84 FEET, A DELTA ANGLE OF 11 DEGREES 01'08" AND WHOSE LONG CHORD BEARS NORTH 80 DEGREES 32'49" WEST A DISTANCE OF 136.33 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 86 DEGREES 03'23" WEST A DISTANCE OF 129.86 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET, AN ARC LENGTH OF 173.13 FEET, A DELTA ANGLE OF 45 DEGREES 05'19" AND WHOSE LONG CHORD BEARS NORTH 63 DEGREES 30'43" WEST A DISTANCE OF 108.70 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 40 DEGREES 58'04" WEST A DISTANCE OF 6.59 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, LEAVING SAID NORTHERLY RIGHT OF WAY, NORTH 11 DEGREES 23'10" EAST A DISTANCE OF 163.22 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

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THENCE, NORTH 43 DEGREES 15'23" WEST A DISTANCE OF 59.51 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 15 DEGREES 50'44" EAST A DISTANCE OF 344.38 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 152.88 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 66 DEGREES 51'37" EAST A DISTANCE OF 80.00 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 171.88 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 69 DEGREES 08'14" EAST A DISTANCE OF 613.70 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 83.75 FEET, A DELTA ANGLE OF 20 DEGREES 51'46" AND WHOSE LONG CHORD BEARS NORTH 70 DEGREES 34'07" EAST A DISTANCE OF 83.28 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, SOUTH 80 DEGREES 00'00" EAST A DISTANCE OF 169.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 8, BLACK ROCK FIFTH ADDITION, ACCORDING TO THE PLAT RECORDED IN BOOK "J" OF PLATS, AT PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 03 DEGREES 16'27" WEST A DISTANCE OF 2629.95 FEET;

THENCE, SOUTH 86 DEGREES 40'28" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 331.34 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 6602 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOFFS BAY ROAD.

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THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 5610.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 6602 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 83 DEGREES 51'52" EAST A DISTANCE OF 310.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 401.63 FEET;

THENCE, SOUTH 73 DEGREES 54'33" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'29" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 333.56 FEET;

THENCE, NORTH 79 DEGREES 00'19" WEST A DISTANCE OF 197.86 FEET;

THENCE, NORTH 72 DEGREES 31'53" WEST A DISTANCE OF 125.21 FEET;

THENCE, NORTH 19 DEGREES 39'18" WEST A DISTANCE OF 89.49 FEET;

THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.13 FEET;

THENCE, NORTH 59 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;

THENCE, NORTH 56 DEGREES 09'52" EAST A DISTANCE OF 241.31 FEET;

THENCE, NORTH 88 DEGREES 03'38" EAST A DISTANCE OF 81.34 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

A PARCEL OF LAND BEING A PORTION OF TRACT "C", PLAT OF BLACK ROCK, SITUATED IN SECTIONS 9 & 16, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 3, BLOCK 8, BLACK ROCK FIFTH ADDITION, BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE, FROM WHICH AN IRON PIPE WITH A BRASS CAP, 2 1/2 IN. DIAMETER, MARKED "BLACK ROCK P.O.B. INC PLS 6602 2001" BEARS NORTH 65 DEGREES 18'06" WEST A DISTANCE OF 6094.92 FEET;

THENCE, LEAVING SAID RIGHT OF WAY, SOUTH 88 DEGREES 59'30" EAST A DISTANCE OF 40.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID KIMBERLITE DRIVE;

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THENCE, ALONG SAID RIGHT OF WAY LINE, THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 250.00 FEET, AN ARC LENGTH OF 220.08 FEET, AND A DELTA OF 50 DEGREES 26'17" WITH A CHORD THAT BEARS SOUTH 28 DEGREES 18'38" WEST A DISTANCE OF 213.04 FEET TO A POINT;
2. SOUTH 53 DEGREES 26'48" WEST A DISTANCE OF 97.42 FEET TO A POINT;
3. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 20.48 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS SOUTH 16 DEGREES 17'30" WEST A DISTANCE OF 205.35 FEET TO A POINT;
4. SOUTH 20 DEGREES 51'48" EAST A DISTANCE OF 18.95 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 90 DEGREES 00'00" WITH A CHORD THAT BEARS SOUTH 65 DEGREES 51'48" EAST A DISTANCE OF 28.28 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF CLUBHOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 68 DEGREES 08'14" WEST A DISTANCE OF 80.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE;

THENCE, ALONG SAID WESTERLY RIGHT OF WAY LINE THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 80 DEGREES 00'00" WITH A CHORD THAT BEARS NORTH 24 DEGREES 08'14" EAST A DISTANCE OF 28.28 FEET TO A POINT;
2. NORTH 20 DEGREES 51'48" WEST A DISTANCE OF 18.95 FEET TO A POINT;
3. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 272.38 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS NORTH 16 DEGREES 17'30" EAST A DISTANCE OF 253.67 FEET TO A POINT;
4. NORTH 52 DEGREES 28'46" EAST A DISTANCE OF 97.42 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 184.86 FEET, AND A DELTA OF 60 DEGREES 26'17" WITH A CHORD THAT BEARS NORTH 28 DEGREES 13'38" EAST A DISTANCE OF 176.95 FEET TO THE TRUE POINT OF BEGINNING.

WHEN RECORDED MAIL TO:

West Sprague Avenue Holdings, LLC
c/o Washington Trust Bank
Corporate Banking (320)
P.O. Box 2127
Spokane, WA 99210-2127

ACCOMMODATION ONLY

ASSIGNMENT OF DEED IN LIEU OF FORECLOSURE DOCUMENTS

For value received, WASHINGTON TRUST BANK, a corporation organized and existing under the laws of State of Washington and engaged in the business of banking, whose current address is Corporate Banking, 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington ("Assignor"), hereby grants, assigns, and transfers to WEST SPRAGUE AVENUE HOLDINGS, LLC, an Idaho limited liability company, whose current address is 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington ("Assignee"), without recourse, representation, or warranty of any kind, all of its right, title, and interest in and to the following Deed In Lieu of Foreclosure documents:

1. Agreement for Deed In Lieu of Foreclosure dated August 11, 2010, by and between Washington Trust Bank, The Club at Black Rock, LLC, and Black Rock Investments, Inc.;
2. Non-Merger Warranty Deed In Lieu of Foreclosure dated August 11, 2010, recorded on August 11, 2010, as Recording No. 2277224000, records of Kootenai County, Idaho, executed by The Club at Black Rock, LLC and Black Rock Investments, Inc., to Washington Trust Bank;
3. Estoppel Affidavit dated August 11, 2010, recorded on August 11, 2010, as Recording No. 2277225000, records of Kootenai County, Idaho, executed by The Club at Black Rock, LLC and Black Rock Investments, LLC;
4. Assignment of Declarant Rights dated August 11, 2010, recorded on August 11, 2010, as Recording No. 2277226000, records of Kootenai County, Idaho, executed by Black Rock Development, Inc., as Assignor, and Washington Trust Bank, as Assignee; and
5. Bill of Sale and Assignment dated August 11, 2010, executed by The Club at Black Rock, LLC and Black Rock Investments, Inc.

EXHIBIT F

0616

(collectively, "Deed In Lieu of Foreclosure Documents"). The Deed In Lieu of Foreclosure Documents cover real property legally described therein as follows, to-wit:

See Exhibit "A" attached hereto and incorporated by reference herein.

TOGETHER with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way and appurtenances; all water, water rights, and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties and profits relating to the real property, including without limitation, all minerals, oil, gas, geothermal and similar matters; all assignments of rents and security interest in the rents and personal property.

Commonly known as NNA, Coeur d'Alene, Idaho, 83814, Parcel Nos. 0-0770-000-00A-0, 0-0770-000-00A-B, 0-0778-000-00C-A, 0-0778-000-00C-B, 0-0776-008-001-A, 0-0770-000-00C-C.

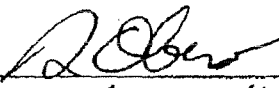
Subject to:

1. Reservations, provisions, covenants, conditions, restrictions, dedications, easements, rights of way, and agreements of record.
2. General and special taxes and assessments for the year 2009 and for the current year which are not yet due and payable.

DATED: August 23rd, 2010.

ASSIGNOR:

WASHINGTON TRUST BANK

By: 
Its: Senior Vice President

STATE OF WASHINGTON)

: ss

County of Spokane)

On this 23rd day of August, 2010, before me personally appeared DEAN OBERST, to me known to be the SENIOR VICE PRES. of WASHINGTON TRUST BANK, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument on behalf of said corporation.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this certificate first above written.

TERRI K WARNER

State of Washington

Notary — — — Public

MY COMMISSION EXPIRES 09-13-2013

(Seal or Stamp)

TERRI K. WARNER

Notary Public

(Signature)

TERRI K. WARNER

(Print Name)

My commission expires: 9-13-13

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EXHIBIT "A"
LEGAL DESCRIPTION

Order No. 8001-26935
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PARCEL 1:

TRACT "A", BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN BOOK "I" OF PLATS AT PAGE 289, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO,

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK FIFTH ADDITION, RECORDED IN BOOK "J" OF PLATS, PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO,

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK SIXTH ADDITION, RECORDED IN BOOK "J" OF PLATS AT PAGE 41, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO,

EXCEPT ANY PORTION LYING WITHIN THE PLAT OF BLACK ROCK GOLF COTTAGES, RECORDED IN BOOK "J" OF PLATS AT PAGE 361, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO,

AND EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 05 DEGREES 15'27" WEST A DISTANCE OF 2829.95 FEET;

THENCE, SOUTH 86 DEGREES 49'26" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 381.84 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 6602 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOFFEY BAY ROAD.

THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 5610.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 6602 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 83 DEGREES 51'52" EAST A DISTANCE OF 310.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 491.63 FEET;

THENCE, SOUTH 73 DEGREES 54'25" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'29" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 833.56 FEET;

THENCE, NORTH 79 DEGREES 00'19" WEST A DISTANCE OF 187.86 FEET;

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EXHIBIT "A"
LEGAL DESCRIPTION

THENCE, NORTH 72 DEGREES 31'53" WEST A DISTANCE OF 125.21 FEET;
THENCE, NORTH 18 DEGREES 39'18" WEST A DISTANCE OF 98.49 FEET;
THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.13 FEET;
THENCE, NORTH 59 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;
THENCE, NORTH 68 DEGREES 09'52" EAST A DISTANCE OF 241.31 FEET;
THENCE, NORTH 66 DEGREES 03'36" EAST A DISTANCE OF 81.34 FEET TO THE TRUE
POINT OF BEGINNING.

PARCEL 2:

A PARCEL OF LAND BEING PORTIONS OF TRACT C OF THE PLAT OF BLACK ROCK SEVENTH ADDITION, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "J" OF PLATS AT PAGE 119, RECORDS OF KOOTENAI COUNTY, IDAHO AND LOT 1, BLOCK 11, PLAT OF BLACK ROCK, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER IN BOOK "I" OF PLATS AT PAGE 299, RECORDS OF KOOTENAI COUNTY, IDAHO, LOCATED IN PORTIONS OF SECTIONS 9, 16 & 17, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SECTION 8, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN BEING MONUMENTED BY A FOUND 1/2 IN. REBAR PER CP&F 1027778, FROM WHICH THE CENTER CORNER BEARS SOUTH 86 DEGREES 49'26" EAST A DISTANCE OF 2852.82 FEET MONUMENTED BY A 5/8 IN. REBAR PER CP&F 1027777;

THENCE, SOUTH 86 DEGREES 49'26" EAST A DISTANCE OF 331.34 FEET TO A 2 1/2 IN. BRASS CAP MARKED "BLACK ROCK P.O.B. INC PLS 6802 2801;"

THENCE, SOUTH 82 DEGREES 14'42" EAST A DISTANCE OF 6404.76 FEET TO A 5/8 IN. REBAR MARKED INC PLS 6802, SAID POINT BEING THE TRUE POINT OF BEGINNING;

THENCE, SOUTH 33 DEGREES 29'18" WEST A DISTANCE OF 270.18 FEET TO A PLASTIC CAP MARKED INC PLS 6802;

THENCE, SOUTH 47 DEGREES 54'02" WEST A DISTANCE OF 518.54 FEET TO A PLASTIC CAP MARKED INC PLS 6802;

THENCE, SOUTH 55 DEGREES 50'03" WEST A DISTANCE OF 242.82 FEET TO A PLASTIC CAP MARKED INC PLS 6802;

THENCE, SOUTH 25 DEGREES 44'13" WEST A DISTANCE OF 248.68 FEET TO A PLASTIC CAP MARKED INC PLS 6802;

CONFORM
COPY

Order No. 0001-26055
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EXHIBIT "A"
LEGAL DESCRIPTION

THENCE, NORTH 80 DEGREES 06'04" EAST A DISTANCE OF 825.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 35 DEGREES 40'39" EAST A DISTANCE OF 895.73 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 89 DEGREES 11'12" EAST A DISTANCE OF 291.79 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 55 DEGREES 58'55" EAST A DISTANCE OF 550.43 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 38 DEGREES 57'49" EAST A DISTANCE OF 203.08 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 61 DEGREES 52'27" WEST A DISTANCE OF 122.64 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 20 DEGREES 09'50" EAST A DISTANCE OF 477.68 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 41 DEGREES 25'12" WEST A DISTANCE OF 176.13 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 80 DEGREES 47'18" WEST A DISTANCE OF 314.01 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 62 DEGREES 38'47" WEST A DISTANCE OF 222.77 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID EASTERLY RIGHT OF WAY OF CLUB HOUSE DRIVE THE FOLLOWING EIGHT COURSES;

1. THENCE, A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 880.00 FEET, AN ARC LENGTH OF 551.28 FEET, A DELTA ANGLE OF 33 DEGREES 58'05", AND WHOSE LONG CHORD BEARS NORTH 01 DEGREES 32'57" EAST A DISTANCE OF 572.80 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

2. THENCE, NORTH 15 DEGREES 26'36" WEST A DISTANCE OF 142.83 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

3. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 690.00 FEET, AN ARC LENGTH OF 304.02 FEET, A DELTA ANGLE OF 29 DEGREES 31'27" AND WHOSE LONG CHORD BEARS NORTH 30 DEGREES 12'10" WEST A DISTANCE OF 300.67 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

4. THENCE, NORTH 44 DEGREES 58'03" WEST A DISTANCE OF 205.12 FEET TO A

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EXHIBIT "A"
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PLASTIC CAP MARKED INC PLS 8602;

5. THENCE, ALONG A CURVE TO THE RIGHT, HAVING A RADIUS OF 330.00 FEET, AN ARC LENGTH OF 285.54 FEET, A DELTA ANGLE OF 40 DEGREES 34'34" AND WHOSE LONG CHORD BEARS NORTH 20 DEGREES 10'48" WEST A DISTANCE OF 276.71 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

6. THENCE, NORTH 04 DEGREES 38'32" EAST A DISTANCE OF 81.80 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

7. THENCE, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 19.94 FEET, A DELTA ANGLE OF 04 DEGREES 57'58" AND WHOSE LONG CHORD BEARS NORTH 02 DEGREES 07'32" EAST A DISTANCE OF 19.93 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

8. THENCE, ALONG A REVERSE CURVE TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 28.83 FEET, A DELTA ANGLE OF 80 DEGREES 17'12" AND WHOSE LONG CHORD BEARS NORTH 80 DEGREES 47'00" EAST A DISTANCE OF 25.79 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, ALONG THE SOUTHERLY RIGHT OF WAY OF SLATE DRIVE, NORTH 70 DEGREES 55'45" EAST A DISTANCE OF 207.97 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, ALONG A CURVE TO THE LEFT, HAVING A RADIUS OF 590.00 FEET, AN ARC LENGTH OF 82.83 FEET, A DELTA ANGLE OF 03 DEGREES 11'18" AND WHOSE LONG CHORD BEARS NORTH 78 DEGREES 20'03" EAST A DISTANCE OF 82.83 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, LEAVING SAID SOUTHERLY RIGHT OF WAY, SOUTH 23 DEGREES 03'05" EAST A DISTANCE OF 87.97 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 54 DEGREES 40'40" EAST A DISTANCE OF 522.14 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 16 DEGREES 29'04" EAST A DISTANCE OF 385.98 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 22 DEGREES 40'51" EAST A DISTANCE OF 106.28 FEET TO A PLASTIC CAP MARKED INC PLS 8607;

THENCE, NORTH 87 DEGREES 37'40" EAST A DISTANCE OF 384.46 FEET TO A PLASTIC CAP MARKED INC PLS 8602, SAID POINT BEING ON THE WEST LINE OF THE SOUTHEAST QUARTER OF SECTION 9;

THENCE, ALONG SAID WEST LINE, SOUTH 03 DEGREES 26'57" WEST A DISTANCE OF 1573.86 FEET TO THE SOUTH QUARTER CORNER OF SAID SECTION 9, MONUMENTED BY AN ALUMINUM CAP PER CP&F 1065178;

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THENCE, SOUTH ALONG THE WEST LINE OF THE NORTHEAST QUARTER OF SECTION 16,
SOUTH 03 DEGREES 45'42" WEST A DISTANCE OF 162.41 FEET TO A PLASTIC CAP
MARKED INC PLS 8602;

THENCE, LEAVING SAID SECTION LINE, NORTH 86 DEGREES 30'43" WEST A DISTANCE
OF 04.34 FEET TO A PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 55 DEGREES 47'40" WEST A DISTANCE OF 455.21 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 62 DEGREES 09'23" WEST A DISTANCE OF 205.73 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 69 DEGREES 11'12" WEST A DISTANCE OF 395.87 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 80 DEGREES 38'52" WEST A DISTANCE OF 98.47 FEET TO A PLASTIC
CAP MARKED INC PLS 8602;

THENCE, SOUTH 82 DEGREES 42'34" WEST A DISTANCE OF 145.48 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 31 DEGREES 44'30" WEST A DISTANCE OF 305.49 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 44 DEGREES 21'33" WEST A DISTANCE OF 190.04 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, SOUTH 68 DEGREES 30'11" WEST A DISTANCE OF 88.28 FEET TO A PLASTIC
CAP MARKED INC PLS 8602;

THENCE, SOUTH 85 DEGREES 55'40" WEST A DISTANCE OF 187.40 FEET TO A
PLASTIC CAP MARKED INC PLS 8602;

THENCE, NORTH 13 DEGREES 12'05" WEST A DISTANCE OF 47.63 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 90 DEGREES 00'00" WEST A DISTANCE OF 60.07 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, NORTH 70 DEGREES 52'28" WEST A DISTANCE OF 78.18 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 47 DEGREES 24'08" WEST A DISTANCE OF 67.22 FEET TO A PLASTIC
CAP MARKED INC PLS 9367;

THENCE, SOUTH 15 DEGREES 12'34" WEST A DISTANCE OF 95.50 FEET TO A PLASTIC

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CAP MARKED INC PLS 9367;

THENCE, SOUTH 88 DEGREES 19'09" EAST A DISTANCE OF 215.79 FEET TO A PLASTIC CAP MARKED INC PLS 9367;

THENCE, SOUTH 13 DEGREES 12'05" EAST A DISTANCE OF 74.75 FEET TO A PLASTIC CAP MARKED INC PLS 9367, SAID POINT BEING ON THE CENTERLINE OF TONALITE COURT;

THENCE, ALONG SAID CENTERLINE, ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 120.00 FEET, AN ARC LENGTH OF 53.05 FEET, A DELTA ANGLE OF 25 DEGREES 19'48" AND WHOSE LONG CHORD BEARS SOUTH 64 DEGREES 59'49" WEST A DISTANCE OF 52.82 FEET TO A PLASTIC CAP MARKED INC PLS 9387;

THENCE, CONTINUING ALONG SAID CENTERLINE, SOUTH 52 DEGREES 10'55" WEST A DISTANCE OF 2.82 FEET TO A PLASTIC CAP MARKED INC PLS 8802, SAID POINT BEING ON THE NORTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY, A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 150.01 FEET, A DELTA ANGLE OF 37 DEGREES 22'10" AND WHOSE LONG CHORD BEARS NORTH 56 DEGREES 21'10" WEST A DISTANCE OF 147.37 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 80.00 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 75 DEGREES 02'15" WEST A DISTANCE OF 322.41 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE LEFT, HAVING A RADIUS OF 710.00 FEET, AN ARC LENGTH OF 136.54 FEET, A DELTA ANGLE OF 11 DEGREES 01'06" AND WHOSE LONG CHORD BEARS NORTH 80 DEGREES 32'49" WEST A DISTANCE OF 126.83 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 88 DEGREES 03'23" WEST A DISTANCE OF 120.86 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 220.00 FEET, AN ARC LENGTH OF 173.13 FEET, A DELTA ANGLE OF 45 DEGREES 05'19" AND WHOSE LONG CHORD BEARS NORTH 83 DEGREES 30'43" WEST A DISTANCE OF 108.70 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, CONTINUING ALONG SAID RIGHT OF WAY, NORTH 40 DEGREES 58'04" WEST A DISTANCE OF 6.59 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

THENCE, LEAVING SAID NORTHERLY RIGHT OF WAY, NORTH 11 DEGREES 23'10" EAST A DISTANCE OF 163.22 FEET TO A PLASTIC CAP MARKED INC PLS 8802;

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THENCE, NORTH 43 DEGREES 15'28" WEST A DISTANCE OF 59.51 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 15 DEGREES 50'44" EAST A DISTANCE OF 344.39 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 152.89 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, SOUTH 06 DEGREES 51'37" EAST A DISTANCE OF 30.00 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, NORTH 23 DEGREES 08'23" EAST A DISTANCE OF 171.89 FEET TO A PLASTIC CAP MARKED INC PLS 6602, SAID POINT BEING ON THE SOUTHERLY RIGHT OF WAY OF CLUB HOUSE DRIVE;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, NORTH 89 DEGREES 08'14" EAST A DISTANCE OF 613.70 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, A CURVE TO THE RIGHT, HAVING A RADIUS OF 230.00 FEET, AN ARC LENGTH OF 83.75 FEET, A DELTA ANGLE OF 20 DEGREES 51'46" AND WHOSE LONG CHORD BEARS NORTH 79 DEGREES 34'07" EAST A DISTANCE OF 83.29 FEET TO A PLASTIC CAP MARKED INC PLS 6602;

THENCE, CONTINUING ALONG SAID SOUTHERLY RIGHT OF WAY, SOUTH 80 DEGREES 00'06" EAST A DISTANCE OF 169.46 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 3:

LOT 1, BLOCK 8, BLACK ROCK FIFTH ADDITION, ACCORDING TO THE PLAT RECORDED IN BOOK "J" OF PLATS, AT PAGE 12, ET SEQ., RECORDS OF KOOTENAI COUNTY, IDAHO.

EXCEPT A PARCEL OF LAND BEING PORTIONS OF SECTIONS 8 & 9, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT AN IRON ROD MONUMENT MARKING THE WEST QUARTER CORNER, SAID SECTION 8, FROM WHICH AN ALUMINUM CAP MONUMENT MARKING THE SOUTHWEST CORNER THEREOF BEARS SOUTH 03 DEGREES 15'27" WEST A DISTANCE OF 2629.95 FEET;

THENCE, SOUTH 86 DEGREES 40'28" EAST ALONG THE NORTH LINE OF THE SOUTHWEST QUARTER, SAID SECTION 8, A DISTANCE OF 331.94 FEET TO AN IRON PIPE WITH A 2 1/2" BRASS CAP STAMPED "BLACKROCK POB INC PLS 6602 2001", BEING A POINT ON THE SOUTH RIGHT OF WAY LINE OF LOFFS BAY ROAD.

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EXHIBIT "A"
LEGAL DESCRIPTION

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THENCE, SOUTH 71 DEGREES 02'29" EAST A DISTANCE OF 6610.42 FEET TO AN IRON ROD WITH PLASTIC CAP MARKED PLS 0002 BEING THE NORTHERN MOST CORNER OF LOT 2, BLOCK 8, BLACK ROCK FIFTH ADDITION AND THE TRUE POINT OF BEGINNING FOR THIS DESCRIPTION.

THENCE, SOUTH 63 DEGREES 51'52" EAST A DISTANCE OF 310.31 FEET;

THENCE, SOUTH 11 DEGREES 05'44" EAST A DISTANCE OF 401.68 FEET;

THENCE, SOUTH 73 DEGREES 54'38" WEST A DISTANCE OF 162.81 FEET;

THENCE, SOUTH 01 DEGREES 04'28" WEST A DISTANCE OF 55.27 FEET;

THENCE, NORTH 88 DEGREES 21'36" WEST A DISTANCE OF 75.41 FEET;

THENCE, NORTH 72 DEGREES 32'45" WEST A DISTANCE OF 333.56 FEET;

THENCE, NORTH 70 DEGREES 00'18" WEST A DISTANCE OF 187.86 FEET;

THENCE, NORTH 72 DEGREES 21'53" WEST A DISTANCE OF 125.21 FEET;

THENCE, NORTH 10 DEGREES 39'16" WEST A DISTANCE OF 88.48 FEET;

THENCE, NORTH 47 DEGREES 13'38" EAST A DISTANCE OF 175.13 FEET;

THENCE, NORTH 50 DEGREES 00'02" EAST A DISTANCE OF 156.79 FEET;

THENCE, NORTH 58 DEGREES 08'52" EAST A DISTANCE OF 241.31 FEET;

THENCE, NORTH 66 DEGREES 08'38" EAST A DISTANCE OF 81.34 FEET TO THE TRUE POINT OF BEGINNING.

PARCEL 4:

A PARCEL OF LAND BEING A PORTION OF TRACT "C", PLAT OF BLACK ROCK, SITUATED IN SECTIONS 9 & 10, TOWNSHIP 48 NORTH, RANGE 4 WEST, BOISE MERIDIAN, KOOTENAI COUNTY, IDAHO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF LOT 3, BLOCK 8, BLACK ROCK FIFTH ADDITION, BEING A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE, FROM WHICH AN IRON PIPE WITH A BRASS CAP, 2 1/2 IN. DIAMETER, MARKED "BLACK ROCK P.O.B. INC PLS 0002 2001" BEARS NORTH 55 DEGREES 18'06" WEST A DISTANCE OF 8004.92 FEET;

THENCE, LEAVING SAID RIGHT OF WAY, SOUTH 88 DEGREES 59'30" EAST A DISTANCE OF 40.00 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SAID KIMBERLITE DRIVE;

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EXHIBIT "A"
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THENCE, ALONG SAID RIGHT OF WAY LINE, THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE RIGHT HAVING A RADIUS OF 260.00 FEET, AN ARC LENGTH OF 220.08 FEET, AND A DELTA OF 50 DEGREES 28'17" WITH A CHORD THAT BEARS SOUTH 28 DEGREES 13'38" WEST A DISTANCE OF 213.04 FEET TO A POINT;
2. SOUTH 53 DEGREES 28'46" WEST A DISTANCE OF 97.42 FEET TO A POINT;
3. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 170.00 FEET, AN ARC LENGTH OF 20.48 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS SOUTH 16 DEGREES 17'30" WEST A DISTANCE OF 205.35 FEET TO A POINT;
4. SOUTH 20 DEGREES 51'46" EAST A DISTANCE OF 18.95 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 20.80 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 90 DEGREES 00'00" WITH A CHORD THAT BEARS SOUTH 65 DEGREES 51'48" EAST A DISTANCE OF 28.28 FEET TO A POINT ON THE NORTHERLY RIGHT OF WAY LINE OF CLUBHOUSE DRIVE;

THENCE, ALONG SAID NORTHERLY RIGHT OF WAY LINE, SOUTH 69 DEGREES 08'14" WEST A DISTANCE OF 80.00 FEET TO A POINT ON THE WESTERLY RIGHT OF WAY LINE OF KIMBERLITE DRIVE;

THENCE, ALONG SAID WESTERLY RIGHT OF WAY LINE THROUGH THE FOLLOWING FIVE COURSES:

1. ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 20.00 FEET, AN ARC LENGTH OF 31.42 FEET, AND A DELTA OF 90 DEGREES 00'00" WITH A CHORD THAT BEARS NORTH 24 DEGREES 08'14" EAST A DISTANCE OF 28.28 FEET TO A POINT;
2. NORTH 20 DEGREES 51'46" WEST A DISTANCE OF 18.95 FEET TO A POINT;
3. ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 272.38 FEET, AND A DELTA OF 74 DEGREES 18'33" WITH A CHORD THAT BEARS NORTH 16 DEGREES 17'30" EAST A DISTANCE OF 253.67 FEET TO A POINT;
4. NORTH 53 DEGREES 28'46" EAST A DISTANCE OF 97.42 FEET TO A POINT;
5. ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 210.00 FEET, AN ARC LENGTH OF 184.86 FEET, AND A DELTA OF 50 DEGREES 28'17" WITH A CHORD THAT BEARS NORTH 28 DEGREES 13'38" EAST A DISTANCE OF 178.95 FEET TO THE TRUE POINT OF BEGINNING.

Filed for Record at Request of and
copy returned to:

Dean Oberst
Washington Trust Bank
717 W. Sprague Avenue
Spokane, WA 99201

74943-KM

WARRANTY DEED

FOR VALUE RECEIVED, WEST SPRAGUE AVENUE HOLDINGS, LLC, a Washington limited liability company, by WASHINGTON TRUST BANK, its sole member, by John E. (Jack) Heath, III, President, as Grantor, whose address is 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington, does hereby grant, bargain, sell and convey unto THE GOLF CLUB AT BLACK ROCK, LLC, an Idaho limited liability company, as Grantee, whose current address is 18168 South Kimberlite Drive, Coeur d'Alene, Idaho 83814, of the County of Kootenai, State of Idaho, the following described real property which is located in Kootenai County, Idaho, to wit:

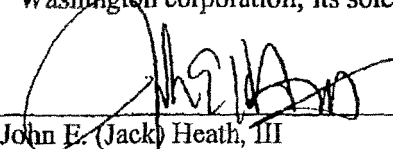
See Exhibit A attached hereto

To have and to hold said real property, with their appurtenances unto said Grantee, their heirs and assigns forever, and Grantor does hereby covenant to and with Grantee that it is the owner in fee simple of said real property and that the real property is free from all encumbrances, except general taxes for the year 2010 (not yet due or payable) and the easements, covenants, restrictions and conditions of record.

DATED this 29th day of October, 2010.

WEST SPRAGUE AVENUE HOLDINGS,
LLC, a Washington limited liability company

BY: WASHINGTON TRUST BANK, a
Washington corporation, its sole member

By 
John E. (Jack) Heath, III
President

STATE OF WASHINGTON)

: SS

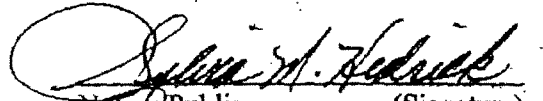
County of Spokane)

On this 29th day of October, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared John E. (Jack) Heath, III, identified to me to be the President of the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to me to be the sole member of West Sprague Avenue Holdings, LLC, that executed the within instrument, and acknowledged to me that such corporation executed the same as such sole member and that such Limited Liability Company executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year first above written.

Notary Public
State of Washington
SYLVIA M. HEDRICK
MY COMMISSION EXPIRES
November 17, 2011

(Seal or Stamp)


Notary Public (Signature)
Sylvia M. Hedrick
(Print Name)

My appointment expires: 11/17/2011

Residing at: Spokane

Chicago Title Insurance Company

Commitment Number: 74849

EXHIBIT "A"
PROPERTY DESCRIPTION

The land referred to in this Commitment is described as follows:

PARCEL 1:

Tract "A", BLACK ROCK, according to the plat recorded in the office of the County Recorder in Book "T" of Plats at Page 288, et seq., records of Kootenai County, Idaho.

EXCEPT any portion lying within the Plat of BLACK ROCK FIFTH ADDITION, according to the plat recorded in the office of the County Recorder in Book J of Plats at Page 12, et seq., records of Kootenai County, Idaho.

EXCEPT any portion lying within the Plat of BLACK ROCK SIXTH ADDITION, according to the plat recorded in the office of the County Recorder in Book J of Plats at Page 41, et seq., records of Kootenai County, Idaho.

EXCEPT any portion lying within the Plat of BLACK ROCK GOLF COTTAGES, according to the plat recorded in the office of the County Recorder in Book J of Plats at Page 351, et seq., records of Kootenai County, Idaho.

AND EXCEPT a parcel of land being portions of Sections 8 & 9, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter corner, said Section 8, from which an aluminum cap monument marking the Southwest corner thereof bears South 03°15'27" West a distance of 2629.95 feet;

thence, South 56°49'28" East along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pipe with a 2 1/2" brass cap stamped "BLACKROCK FOB INC PLS 6002 2001", being a point on the South right of way line of Laite Bay Road;

thence, South 71°02'29" East a distance of 5810.42 feet to an iron rod with plastic cap marked PLB 6602 being the Northern most corner of Lot 2, Block 8, BLACK ROCK FIFTH ADDITION and the TRUE POINT OF BEGINNING for this description;

thence, South 63°51'52" East a distance of 310.81 feet;

thence, South 11°05'44" East a distance of 401.63 feet;

thence, South 73°54'33" West a distance of 162.81 feet;

thence, South 01°04'28" West a distance of 55.27 feet;

thence, North 88°21'38" West a distance of 75.41 feet;

thence, North 72°32'45" West a distance of 593.55 feet;

thence, North 79°00'19" West a distance of 187.55 feet;

thence, North 72°31'53" West a distance of 123.21 feet;

thence, North 19°39'16" West a distance of 99.49 feet;

ALL A COMMITMENT
Exhibit A

(748497494322)

EXHIBIT "A"
(Continued)

Commitment Number: 74943

thence, North 47°13'38" East a distance of 175.13 feet;
thence, North 59°00'02" East a distance of 158.79 feet;
thence, North 58°09'52" East a distance of 241.31 feet;
thence, North 88°03'38" East a distance of 81.34 feet to the TRUE POINT OF BEGINNING.

PARCEL 2:

A parcel of land being portions of Tract C of the Plat of Black Rock Seventh Addition, according to the plat recorded in the office of the County Recorder in Book J of Plats at Page 118, records of Kootenai County, Idaho and Lot 1, Block 11, Plat of Black Rock, according to the plat recorded in the office of the County Recorder in Book "J" of Plats at Page 296, records of Kootenai County, Idaho, located in portions of Sections 8, 16 & 17, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, and being more particularly described as follows:

COMMENCING at the West Quarter Corner of Section 8, Township 48 North, Range 4 West, Boise Meridian being monumented by a found 1/2 in. rebar per OP&F 1027776, from which the Center corner bears S88°49'28"E a distance of 2652.82 feet monumented by a 5/8 in. rebar per OP&F 1027777; thence, S88°49'28"E a distance of 331.34 feet to a 2 1/2 in. brass cap marked "Black Rock P.O.B. INC PLS 6602 2001"; thence, S82°14'42"E a distance of 6404.76 feet to a 5/8 in. rebar marked INC PLS 6602, said point being the TRUE POINT OF BEGINNING;

Thence, S33°28'18"W a distance of 270.18 feet to a plastic cap marked INC PLS 6602;
Thence, S47°34'02"W a distance of 519.54 feet to a plastic cap marked INC PLS 6602;
Thence, S65°50'03"W a distance of 242.82 feet to a plastic cap marked INC PLS 6602;
Thence, S25°44'13"W a distance of 248.08 feet to a plastic cap marked NC PLS 6602;
Thence, N80°06'04"E a distance of 825.83 feet to a plastic cap marked NC PLS 6602;
Thence, N55°40'30"E a distance of 895.79 feet to a plastic cap marked NC PLS 6602;
Thence, N89°11'12"E a distance of 281.78 feet to a plastic cap marked INC PLS 6602;
Thence, N55°55'55"E a distance of 550.49 feet to a plastic cap marked NC PLS 6602;
Thence, N38°57'49"E a distance of 203.08 feet to a plastic cap marked INC PLS 6602;
Thence, N81°52'27"W a distance of 122.84 feet to a plastic cap marked NC PLS 6602;
Thence, N20°09'50"E a distance of 477.83 feet to a plastic cap marked NC PLS 6602;
Thence, N41°25'12"W a distance of 176.13 feet to a plastic cap marked NC PLS 6602;
Thence, S80°47'16"W a distance of 314.01 feet to a plastic cap marked NC PLS 6602;

ALTA Commitment
Exhibit A

(74943/74948/20)

EXHIBIT "A"
(Continued)

Commitment Number: 74943

Thence, S82°38'47"W a distance of 222.77 feet to a plastic cap marked INC PLS 6602, said point being on the Easterly right of way of Club House Drive;

Thence, along said Easterly right of way of Club House Drive the following eight courses:

1. Thence, a non-tangent curve to the left having a radius of 660.00 feet, an arc length of 581.28 feet, a delta angle of 33°58'05", and whose long chord bears N01°32'57"E a distance of 572.60 feet to a plastic cap marked INC PLS 6602;

2. Thence, N15°26'36"W a distance of 142.83 feet to a plastic cap marked INC PLS 6602;

3. Thence, along a curve to the left, having a radius of 580.00 feet, an arc length of 304.02 feet, a delta angle of 29°31'27" and whose long chord bears N30°12'18"W a distance of 300.67 feet to a plastic cap marked INC PLS 6602;

4. Thence, N44°55'03"W a distance of 205.12 feet to a plastic cap marked INC PLS 6602;

5. Thence, along a curve to the right, having a radius of 330.00 feet, an arc length of 265.64 feet, a delta angle of 49°34'34" and whose long chord bears N20°10'46"W a distance of 276.71 feet to a plastic cap marked INC PLS 6602;

6. Thence, N04°38'32"E a distance of 81.60 feet to a plastic cap marked INC PLS 6602;

7. Thence, along a curve to the left, having a radius of 230.00 feet, an arc length of 19.94 feet, a delta angle of 04°57'58" and whose long chord bears N02°07'32"E a distance of 18.93 feet to a plastic cap marked INC PLS 6602;

8. Thence, along a reverse curve to the right, having a radius of 20.00 feet, an arc length of 28.03 feet, a delta angle of 80°17'12" and whose long chord bears N88°47'08"E a distance of 25.79 feet to a plastic cap marked INC PLS 6602;

Thence, along the Southerly right of way of State Drive, N79°55'45"E a distance of 207.87 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said Southerly right of way, along a curve to the left, having a radius of 590.00 feet, an arc length of 32.83 feet, a delta angle of 03°11'18" and whose long chord bears N78°20'06"E a distance of 32.83 feet to a plastic cap marked INC PLS 6602;

Thence, leaving said Southerly right of way, S23°03'05"E a distance of 87.97 feet to a plastic cap marked INC PLS 6602;

Thence, S54°40'40"E a distance of 522.14 feet to a plastic cap marked INC PLS 6602;

Thence, S 18°28'04"E a distance of 365.96 feet to a plastic cap marked INC PLS 6602;

Thence, S22°49'51"E a distance of 106.28 feet to a plastic cap marked INC PLS 6602;

Thence, N87°37'40"E a distance of 384.48 feet to a plastic cap marked INC PLS 6602, said point being on the West line of the Southeast Quarter of Section 9;

ALTA Commitment
Exhibit A

(74943/74943.03)

EXHIBIT "A"
(Continued)

Commitment Number: 74949

Thence, along said West line, S03°28'57"W a distance of 1579.88 feet to the South Quarter corner of said Section 9, monumented by an aluminum cap per OP&F 1066178;

Thence, South along the West line of the Northeast Quarter of Section 16, S03°45'42"W a distance of 162.41 feet to a plastic cap marked NC PLS 6602;

Thence, leaving said Section line, N85°30'43"W a distance of 94.34 feet to a plastic cap marked INC PLS 6602;

Thence, S65°47'40"W a distance of 455.21 feet to a plastic cap marked INC PLS 6602;

Thence, S82°09'29"W a distance of 205.73 feet to a plastic cap marked INC PLS 6602;

Thence, S69°11'12"W a distance of 395.67 feet to a plastic cap marked INC PLS 6602;

Thence, S80°36'52"W a distance of 98.47 feet to a plastic cap marked INC PLS 6602;

Thence, S82°42'34"W a distance of 148.48 feet to a plastic cap marked INC PLS 6602;

Thence, S31°44'30"W a distance of 306.49 feet to a plastic cap marked INC PLS 6602;

Thence, S44°21'23"W a distance of 180.04 feet to a plastic cap marked NC PLS 6602;

Thence, S66°30'11"W a distance of 88.28 feet to a plastic cap marked INC PLS 6602;

Thence, S65°55'40"W a distance of 197.46 feet to a plastic cap marked INC PLS 6602;

Thence, N13°12'05"W a distance of 47.83 feet to a plastic cap marked NC PLS 9387;

Thence, S90°00'00"W a distance of 80.07 feet to a plastic cap marked INC PLS 9387;

Thence, N70°52'26"W a distance of 78.18 feet to a plastic cap marked INC PLS 9387;

Thence, S47°24'08"W a distance of 67.22 feet to a plastic cap marked INC PLS 9387;

Thence, S16°12'34"W a distance of 95.50 feet to a plastic cap marked NC PLS 9387;

Thence, S89°19'09"E a distance of 215.79 feet to a plastic cap marked INC PLS 9387;

Thence, S13°12'05"E a distance of 74.76 feet to a plastic cap marked INC PLS 9387, said point being on the centerline of Tonallie Court;

Thence, along said centerline, along a non-tangent curve to the left having a radius of 120.00 feet, an arc length of 53.05 feet, a delta angle of 25°18'48" and whose long chord bears E84°58'49"W a distance of 82.82 feet to a plastic cap marked INC PLS 9387;

Thence, continuing along said centerline, S62°19'55"W a distance of 8.82 feet to a plastic cap marked INC PLS 6602, said point being on the Northerly right of way of Okub House Drive;

Thence, along said Northerly right of way, a non-tangent curve to the left, having a radius of 230.00 feet, an arc length of 100.00 feet, a delta angle of 25°18'48" and whose long chord bears S62°19'55"W a distance of 100.00 feet to a plastic cap marked INC PLS 6602;

Exhibit A

(74949/7494923)

EXHIBIT "A"
(Continued)

Commitment Number: 74843

arc length of 150.01 feet, a delta angle of $87^{\circ}22'10''$ and whose long chord bears $N58^{\circ}21'10''W$ a distance of 147.37 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, $N75^{\circ}02'15''W$ a distance of 80.00 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, $N75^{\circ}02'16''W$ a distance of 322.41 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, a curve to the left, having a radius of 710.00 feet, an arc length of 198.54 feet, a delta angle of $11^{\circ}01'08''$ and whose long chord bears $N80^{\circ}02'49''W$ a distance of 138.33 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, $N86^{\circ}03'23''W$ a distance of 120.98 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, a curve to the right, having a radius of 220.00 feet, an arc length of 173.13 feet, a delta angle of $45^{\circ}05'18''$ and whose long chord bears $N69^{\circ}30'43''W$ a distance of 168.70 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said right of way, $N40^{\circ}58'04''W$ a distance of 6.59 feet to a plastic cap marked INC PLS 6602;

Thence, leaving said Northerly right of way, $N11^{\circ}23'10''E$ a distance of 169.22 feet to a plastic cap marked INC PLS 6602;

Thence, $N49^{\circ}15'28''W$ a distance of 59.51 feet to a plastic cap marked INC PLS 6602;

Thence, $N15^{\circ}50'44''E$ a distance of 344.39 feet to a plastic cap marked NO PLS 6602;

Thence, $N23^{\circ}06'28''E$ a distance of 152.89 feet to a plastic cap marked INC PLS 6602;

Thence, $S85^{\circ}51'37''E$ a distance of 90.00 feet to a plastic cap marked INC PLS 6602;

Thence, $N23^{\circ}06'23''E$ a distance of 171.89 feet to a plastic cap marked INC PLS 6602, said point being on the Southerly right of way of Club House Drive;

Thence, continuing along said Southerly right of way, $N69^{\circ}08'14''E$ a distance of 819.70 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said Southerly right of way, a curve to the right, having a radius of 230.00 feet, an arc length of 83.75 feet, a delta angle of $20^{\circ}51'46''$ and whose long chord bears $N79^{\circ}34'07''E$ a distance of 83.29 feet to a plastic cap marked INC PLS 6602;

Thence, continuing along said Southerly right of way, $S90^{\circ}00'00''E$ a distance of 189.46 feet to the TRUE POINT OF BEGINNING.

PARCELS:

Lot 1, Block 8, BLACK ROCK FIFTH ADDITION, according to the plat recorded in the office of the County Clerk, Exhibit A

(74843/74843/23)

EXHIBIT "A"
(Continued)

Commitment Number: 74943

Recorder in Book J of Plate at Page 12, et seq., records of Kootenai County, Idaho.

EXCEPT a parcel of land being portions of Sections 8 & 9, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter corner, said Section 8, from which an aluminum cap monument marking the Southwest corner thereof bears South 03°15'27" West a distance of 2629.85 feet;

thence, South 88°49'26" East along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pipe with a 2 1/2" brass cap stamped "BLACKROCK POB INC PLS 6602 2001", being a point on the South right of way line of Lolita Bay Road;

thence, South 71°02'29" East a distance of 6610.42 feet to an iron rod with piano cap marked PLS 6602 being the Northern most corner of Lot 2, Block 8, BLACK ROCK FIFTH ADDITION and the TRUE POINT OF BEGINNING for this description;

thence, South 63°51'52" East a distance of 310.31 feet;

thence, South 11°05'44" East a distance of 401.63 feet;

thence, South 73°34'33" West a distance of 162.61 feet;

thence, South 01°04'23" West a distance of 66.27 feet;

thence, North 88°21'36" West a distance of 76.41 feet;

thence, North 72°32'45" West a distance of 893.68 feet;

thence, North 78°00'16" West a distance of 197.88 feet;

thence, North 72°31'53" West a distance of 125.21 feet;

thence, North 19°39'18" West a distance of 89.49 feet;

thence, North 47°13'38" East a distance of 176.13 feet;

thence, North 68°00'02" East a distance of 156.79 feet;

thence, North 58°09'52" East a distance of 241.31 feet;

thence, North 65°03'36" East a distance of 81.94 feet to the TRUE POINT OF BEGINNING.

PARCEL 4:

A Parcel of land being a portion of Tract "C", Plat of Black Rock, situated in Sections 9 & 10, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, being more particularly described as follows:

BEGINNING at the Southeast corner of Lot 3, Block 8, Black Rock Fifth Addition, being a point on the West side right-of-way line of Kimberlitt Drive, from which an iron pipe with a Brass Cap, 2 1/2 in. diam.,

ALTA Commitment
Exhibit A

(74943/74943/20)

EXHIBIT "A"
(Continued)

Commitment Number: 74949

marked Black Rock P.O.B. INC PLS 6602 2001° bears N85°18'06"W a distance of 6004.82 feet;

Thence, leaving said right-of-way, S66°58'30"E a distance of 40.00 feet to a point on the Easterly right-of-way line of said Kimberlite Drive;

Thence, along said right-of-way line, through the following five courses:

- 1) Along a non-tangent curve to the right having a radius of 250.00 feet, an arc length of 220.08 feet, and a delta of 50°25' 17" with a chord that bears S28°15'38"W a distance of 219.04 feet to a point;
- 2) S63°26'46"W a distance of 67.42 feet to a point;
- 3) Along a curve to the left having a radius of 170.00 feet, an arc length of 20.48 feet and a delta of 74°18'39" with a chord that bears S16°17'30"W a distance of 205.35 feet to a point;
- 4) S20°51'46"E a distance of 16.85 feet to a point;
- 5) Along a curve to the left having a radius of 20.00 feet, an arc length of 31.42 feet, and a delta of 90°00'00" with a chord that bears S65°51'46"E a distance of 28.28 feet to a point on the Northerly right-of-way line of Clubhouse Drive;

Thence, along said Northerly right-of-way line, S89°08' 14"W a distance of 80.00 feet to a point on the Westerly right-of-way line of Kimberlite Drive;

Thence, along said Westerly right-of-way line through the following five courses:

- 1) Along a non-tangent curve to the left having a radius of 20.00 feet, an arc length of 31.42 feet, and a delta of 90°00'00" with a chord that bears N24°08'14"E a distance of 28.28 feet to a point;
- 2) N20°51'46"W a distance of 16.85 feet to a point;
- 3) Along a curve to the right having a radius of 210.00 feet, an arc length of 272.36 feet, and a delta of 74°18'39" with a chord that bears N16°17'30"E a distance of 253.67 feet to a point;
- 4) N53°28'45"E a distance of 67.42 feet to a point;
- 5) Along a curve to the left having a radius of 210.00 feet, an arc length of 184.86 feet, and a delta of 50°28'17" with a chord that bears N28°15'38"E a distance of 178.98 feet to the TRUE POINT OF BEGINNING.

PARCELS:

The West 150 feet of that part of the North half of the Southwest Quarter of the Southeast Quarter and Government Lot 10, according to US. Government subdivision procedures, lying Northerly and Westerly of the centerline of Rockford Bay/Black Rock Road, in Section 9, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho.

ALTA Committers
Exhibit A

(74949/74949/23)

0638

Filed for Record at Request of and
copy returned to:

Dean Oberst
Washington Trust Bank
717 W. Sprague Avenue
Spokane, WA 99201

74944-LM

WARRANTY DEED

FOR VALUE RECEIVED, WASHINGTON TRUST BANK, a Washington corporation, as Grantor, whose address is Corporate Banking, 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington, does hereby grant, bargain, sell and convey unto THE GOLF CLUB AT BLACK ROCK, LLC, an Idaho limited liability company, as Grantee, whose current address is 18168 South Kimberlite Drive, Coeur d'Alene, Idaho 83814, of the County of Kootenai, State of Idaho, the following described real property which is located in Kootenai County, Idaho, to wit:

Lot 1, Block 15, BLACK ROCK, according to the Plat recorded in the office of the County Recorder in Book "I" of Plats at Page 299, et seq., records of Kootenai County, Idaho.

To have and to hold said real property, with their appurtenances unto said Grantee, their heirs and assigns forever, and Grantor does hereby covenant to and with Grantee that it is the owner in fee simple of said real property and that the real property is free from all encumbrances, except general taxes for the year 2010 (not yet due or payable) and the easements, covenants, restrictions and conditions of record.

DATED this 29th day of October, 2010.

WASHINGTON TRUST BANK

By



Dean Oberst
Senior Vice President

County of Spokane

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year in this
certificate first above written.

(Seal or Stamp)

My appointment expires: 11/17/2011

0640

74943 KM

WHEN RECORDED MAIL TO:

JOHN MAGNUSON
P.O. Box 2350
Coeur d'Alene, ID 83816

ASSIGNMENT OF DECLARANT RIGHTS

For value received, WEST SPRAGUE AVENUE HOLDINGS, LLC, a Washington limited liability company, by WASHINGTON TRUST BANK, its sole member, by John E. (Jack) Heath, III, President, as Grantor, whose address is 717 West Sprague Avenue, Spokane, Washington 99201, of the County of Spokane, State of Washington ("Assignor"), hereby grants, assigns, and transfers to THE GOLF CLUB AT BLACK ROCK, LLC, an Idaho limited liability company, whose current address is 18168 South Kimberlite Drive, Coeur d'Alene, Idaho 83814, of the County of Kootenai, State of Idaho ("Assignee"), without recourse, representation, or warranty of any kind, all of its right, title, and interest in and to the Assignment of Declarant Rights dated August 10, 2010, recorded on August 11, 2010, as Recording No. 2277226000, records of Kootenai County, Idaho, executed by Black Rock Development, Inc., as assignor, and Washington Trust Bank, as assignee, and assigned to Assignor by Washington Trust Bank pursuant to the Assignment of Deed in Lieu of Foreclosure Document dated August 23, 2010, and recorded in the records of Kootenai County, Idaho, as Instrument No. 2278843000, on August 24, 2010.

DATED: October 29, 2010.

WEST SPRAGUE AVENUE HOLDINGS,
LLC, a Washington limited liability company

BY: WASHINGTON TRUST BANK, a
Washington corporation, its sole member

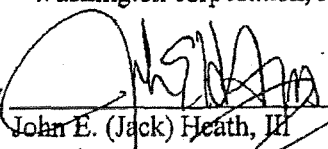
By 
John E. (Jack) Heath, III
President

EXHIBIT I

0642

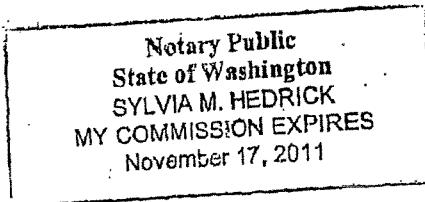
STATE OF WASHINGTON)

: ss

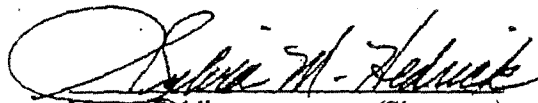
County of Spokane)

On this 29th day of October, 2010, before me, the undersigned, a Notary Public in and for said State, personally appeared John E. (Jack) Heath, III, identified to me to be the President of the corporation that executed the within instrument and known to me to be the person who executed the within instrument on behalf of said corporation, said corporation being known to me to be the sole member of West Sprague Avenue Holdings, LLC, that executed the within instrument, and acknowledged to me that such corporation executed the same as such sole member and that such Limited Liability Company executed the same.

GIVEN UNDER MY HAND AND OFFICIAL SEAL the day and year first above written.



(Seal or Stamp)


Notary Public (Signature)
Sylvia M. Hedrick
(Print Name)

My appointment expires: 11/17/2011
Residing at: Spokane

CONFORM
COPY

EXHIBIT A

to

ASSIGNMENT OF DECLARANT RIGHTS

Assignment of Declarant Rights

5

0644

CONFORM
COPY

Black Rock P.U.A.
(Main Parcel)

A parcel of land being portions of Sections 8, 9, 16 and 17, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

COMMENCING at an iron rod monument marking the West Quarter, said Section 8, from which an aluminum cap monument marking the Southwest corner thereof bears S $03^{\circ}15'27''$ W a distance of 2629.95 feet; thence, S $86^{\circ}49'26''$ E along the North line of the Southwest Quarter, said Section 8, a distance of 331.34 feet to an iron pipe with a 2-1/2" brass cap stamped "BLACKROCK POB INC PLS 6602 2001", being a point on the southerly Right-of-Way line of Loftis Day Road, and the True POINT-OF-BEGINNING for this description.

Thence, in an easterly direction, along said southerly Right-of-Way line, the following courses:

1. S $86^{\circ}49'26''$ E a distance of 198.63 feet to the beginning of a curve concave southerly, having a radius of 2048.74 feet, the long chord of which bears S $84^{\circ}42'59''$ E a distance of 150.67 feet;
2. Easterly along said curve, through a central angle of $4^{\circ}12'53''$, a distance along the arc of 150.71 feet;
3. S $82^{\circ}36'33''$ E a distance of 219.42 feet to the beginning of a curve concave northerly, having a radius of 2069.79 feet, the long chord of which bears S $85^{\circ}42'53''$ E a distance of 224.26 feet;
4. Easterly along said curve, through a central angle of $6^{\circ}12'40''$, a distance along the arc of 224.37 feet;
5. S $88^{\circ}49'13''$ E a distance of 122.94 feet to the beginning of a curve concave southerly, having a radius of 3303.74 feet, the long chord of which bears S $87^{\circ}25'01''$ E a distance of 161.80 feet;
6. Easterly along said curve, through a central angle of $2^{\circ}48'23''$, a distance along the arc of 161.82 feet;
7. S $86^{\circ}00'50''$ E a distance of 572.94 feet to the beginning of a curve concave southerly, having a radius of 517.08 feet, the long chord of which bears S $73^{\circ}11'16''$ E a distance of 229.58 feet;
8. Easterly along said curve, through a central angle of $25^{\circ}39'08''$, a distance along the arc of 231.50 feet;
9. S $60^{\circ}21'42''$ E a distance of 119.87 feet to the beginning of a curve concave northerly, having a radius of 543.06 feet, the long chord of which bears S $72^{\circ}38'05''$ E a distance of 230.88 feet;
10. Easterly along said curve, through a central angle of $24^{\circ}32'46''$, a distance along the arc of 232.65 feet;

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CONFORM
COPY

11. S 84°54'28" E a distance of 101.79 feet to the beginning of a curve concave northerly, having a radius of 669.49 feet, the long chord of which bears N 80°34'21" E a distance of 113.70 feet;

12. Easterly along said curve, through a central angle of 29°02'23", a distance along the arc of 139.12 feet to the beginning of a compound curve concave northwesterly, having a radius of 963.99 feet, the long chord of which bears N 57°03'24" E a distance of 101.47 feet;

13. northwesterly along said curve, through a central angle of 17°39'31", a distance along the arc of 102.71 feet;

14. N 48°03'38" E a distance of 209.94 feet to the beginning of a curve concave southeasterly, having a radius of 1850.37 feet, the long chord of which bears N 51°47'40" E a distance of 241.00 feet;

15. northeasterly along said curve, through a central angle of 7°28'04", a distance along the arc of 241.17 feet;

16. N 55°31'42" E a distance of 299.98 feet to the beginning of a curve concave southerly, having a radius of 245.53 feet, the long chord of which bears N 87°04'50" E a distance of 256.96 feet;

17. Easterly along said curve, through a central angle of 63°06'15", a distance along the arc of 270.42 feet;

18. S 61°22'03" E a distance of 209.46 feet to the beginning of a curve concave northerly, having a radius of 331.50 feet, the long chord of which bears S 86°05'41" E a distance of 277.33 feet;

19. Easterly along said curve, through a central angle of 49°27'16", a distance along the arc of 286.13 feet to the beginning of a compound curve concave northwesterly, having a radius of 815.89 feet, the long chord of which bears N 55°52'19" E a distance of 375.56 feet;

20. northeasterly along said curve, through a central angle of 26°36'45", a distance along the arc of 378.96 feet;

21. N 42°33'56" E a distance of 725.95 feet to the beginning of a curve concave northwesterly, having a radius of 1730.84 feet, the long chord of which bears N 40°54'16" E a distance of 100.35 feet;

22. northeasterly along said curve, through a central angle of 3°19'20", a distance along the arc of 100.36 feet to the intersection of said southerly Right-of-Way line with the East line of the Northeast Quarter, said section 8;

thence, N 03°45'34" E along said East line a distance of 415.50 feet to the northwest corner of Government Lot 5, said Section 9;

thence, N 89°21'52" E along the North line thereof a distance of 298.90 feet;

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thence, S 87°41'59" E, continuing along said line, a distance of 936.51 feet to the northeast corner thereof;

thence, S 07°05'41" W along the East line thereof a distance of 880.08 feet;

thence, S 84°22'57" E a distance of 1291.20 feet to a point on the East line of Government Lot 6, said Section 9;

thence, S 02°18'52" W along said East line a distance of 858.52 feet to the southwest corner thereof;

thence, S 03°26'37" W along the East line of the Southwest Quarter, said Section 9, a distance of 2619.39 feet to the South Quarter corner thereof;

thence, S 03°45'42" W along the East line of the Northwest Quarter, said Section 16, a distance of 957.91 feet to the intersection of said East line with the northerly Right-of-Way line of Rockford Bay Road.

Thence, southwesterly along said northerly Right-of-Way line, the following courses;

1. S 42°19'24" W a distance of 361.23 feet to the beginning of a curve concave northwesterly, having a radius of 1061.97 feet, the long chord of which bears S 47°13'12" W a distance of 181.30 feet;
2. southwesterly along said curve, through a central angle of 9°47'36", a distance along the arc of 181.52 feet;
3. S 52°07'00" W a distance of 117.96 feet to the beginning of a curve concave northwesterly, having a radius of 472.14 feet, the long chord of which bears S 61°57'30" W a distance of 161.40 feet;
4. southwesterly along said curve, through a central angle of 19°41'00", a distance along the arc of 162.20 feet;
5. S 71°48'00" W a distance of 127.88 feet to the beginning of a curve concave southeasterly, having a radius of 997.24 feet, the long chord of which bears S 65°26'05" W a distance of 221.13 feet;
6. southwesterly along said curve, through a central angle of 12°43'51", a distance along the arc of 221.58 feet;
7. S 59°04'09" W a distance of 107.76 feet to the beginning of a curve concave northwesterly, having a radius of 1186.70 feet, the long chord of which bears S 64°44'52" W a distance of 234.84 feet;

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CONFORM
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8. southwesterly along said curve, through a central angle of $11^{\circ}21'25''$, a distance along the arc of 235.22 feet;

9. $S 70^{\circ}25'34'' W$ a distance of 524.16 feet to the beginning of a curve concave northerly, having a radius of 2716.47 feet, the long chord of which bears $S 75^{\circ}32'44'' W$ a distance of 484.79 feet;

10. westerly along said curve, through a central angle of $10^{\circ}14'20''$, a distance along the arc of 485.44 feet to the beginning of a compound curve concave northerly, having a radius of 1075.71 feet, the long chord of which bears $S 83^{\circ}17'43'' W$ a distance of 98.73 feet;

11. southwesterly along said curve, through a central angle of $5^{\circ}15'38''$, a distance along the arc of 98.77 feet;

12. $S 85^{\circ}55'32'' W$ a distance of 372.25 feet to the intersection of said northerly Right-of-Way line with the West line of the Northwest Quarter, said section 16.

thence, $N 03^{\circ}17'00'' E$ along said West line a distance of 946.77 feet;

thence $N 86^{\circ}45'21'' W$ a distance of 658.85 feet;

thence, $N 03^{\circ}15'14'' E$ a distance of 1309.07 feet to the South line, said Section 8;

thence, $N 86^{\circ}44'32'' W$ along said line a distance of 1979.13 feet to the South Quarter corner, said section 8;

thence, $N 86^{\circ}55'57'' W$ along the South line of the Southwest Quarter said section 8 a distance of 1321.88 feet;

thence, $N 03^{\circ}24'29'' E$ a distance of 1308.70 feet;

thence, $N 86^{\circ}56'26'' W$ a distance of 991.92 feet;

thence, $N 03^{\circ}14'13'' E$ a distance of 1314.32 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 656.9 acres, more or less.

TOGETHER WITH THE FOLLOWING DESCRIBED PARCEL:
(Sales Office Parcel)

COMMENCING at the aforementioned South Quarter corner, said Section 8; thence, $S 03^{\circ}46'32'' W$ a distance of 1033.03 feet to an iron rod monument marking the intersection of the West line of Tax Parcel No. 3910 with the southerly Right-of-Way line of Rockford Bay Road, the True POINT-OF-BEGINNING for this description;

thence, along the perimeter of said Tax Parcel No. 3910, the following courses:

CONFORM
COPY

1. N 43°47'52" E along said Right-of-Way line a distance of 310.24 feet;
2. S 39°25'06" E, leaving said Right-of-Way line, a distance of 123.90 feet;
3. S 39°18'44" E a distance of 124.38 feet;
4. S 06°37'38" W a distance of 30.00 feet;
5. S 57°00'33" W a distance of 290.00 feet;
6. S 37°35'51" W a distance of 240.09 feet;
7. N 03°28'17" E along said West line of Tax Parcel No. 3910 a distance of 346.59 feet to the True POINT-OF-BEGINNING;

Said parcel containing approximately 2.2 acres, more or less.

Said described combined parcels contain 659.1 acres (gross), less 2.2 acres of Loftis Way Road and Black Rock Road Rights-of-Way leaving a net area of 656.9 acres, more or less.

CONFORM
COPY.

EXHIBIT B

to

ASSIGNMENT OF DECLARANT RIGHTS

Assignment of Declarant Rights

6

0650

CONFORM
COPY

Legal Description of Black Rock North Final Plat

Real property located in Kootenai County, Idaho legally described as follows:

A portion of the Southeast Quarter of Section 4, Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho, more particularly described as follows:

Beginning at the Southeast corner of said Section 4, Township 48 North, Range 4 West, Boise Meridian, said point being a 1" iron pipe as shown by Inst. No. 1341198, records of Kootenai County, Idaho;

Thence North $76^{\circ}58'58''$ West along the South line of Section 4 a distance of 1106.63 feet;

Thence North $29^{\circ}07'51''$ East, a distance of 370.78 feet to a $5/8''$ rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $71^{\circ}05'20''$ East, a distance of 402.07 feet to a $5/8''$ rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $28^{\circ}40'09''$ East, a distance of 325.54 feet to a $5/8''$ rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $14^{\circ}25'38''$ West, a distance of 225.75 feet to a $5/8''$ rebar with a orange plastic cap, stamped P.L.S 4346;

Thence North $65^{\circ}00'05''$ East, a distance of 297.30 feet being on the East-West $1/16$ th line between the SE $1/16$ th corner on the S $1/16$ th corner of said Section 4, said point also being a $5/8''$ rebar with a orange plastic cap, stamped P.L.S 4346;

Thence South $78^{\circ}57'20''$ East along said East-West $1/16$ th line a distance of 46.31 feet to the South $1/16$ th corner of said Section 4;

Thence South $00^{\circ}25'56''$ West along the East line of said Section 4 a distance of 1324.52 feet to the Southeast corner of said Section 4 and the POINT OF BEGINNING.

Area being 17.739 acres more or less.

0651

EXHIBIT C

to

ASSIGNMENT OF DECLARANT RIGHTS

CONFORM
COPY

Assignment of Declarant Rights

7

0652

CONFORM
COPY

Legal Description of The Estates at Black Rock Bay Property

Real property located in Kootenai County, Idaho legally described as follows:

The West Half of Government Lot 1 and all of Government Lots 2 and 3, Section 9,
Township 48 North, Range 4 West, Boise Meridian, Kootenai County, Idaho.

0653

CONDITIONAL ASSIGNMENT OF DECLARANT RIGHTS
Black Rock Planned Unit Development
Kootenai County, Idaho

5th This Conditional Assignment of Declarant Rights (the "Assignment") is made as of this day of ~~October~~ ^{November}, 2010, by and between Black Rock Development, Inc., an Idaho corporation, whose current address is P.O. Box 3070, Coeur d'Alene, Idaho 83816, of the County of Kootenai, State of Idaho ("Assignor"), as Declarant under the Declaration of Covenants, Conditions and Restrictions for Black Rock Planned Unit Development, recorded on July 31, 2001, as Recording No. 1689309, records of Kootenai County, Idaho, and all addenda and amendments thereto recorded under Recording Nos. 1690505, 1704857, 1706231, 1722879, 1731135, 1733028, 1747017, 1749192, 1752276, 1755905, 1768918, 1803139, 1859226, 1876953, 1880211, 1880212, 1888578, 1905749, 1905750, 1905751, 1922480, 1964748, 2042782000, 2093261000, 2093262000, 2141889000, 2165881000, 2222061000, and 2222544000 (collectively referred to herein as the "Declaration") associated with that certain development located in Kootenai County, Idaho, and known as Black Rock, and The Golf Club at Black Rock, LLC, a limited liability company organized under the laws of the state of Idaho, whose current address is 18168 S. Kimberlite Drive, Coeur d'Alene, Idaho 83814.

RECITALS

A. Assignor is the developer and/or partial owner of real property known as Black Rock, located in Kootenai County, Idaho, legally described on Exhibits "A," "B," and "C" attached hereto ("Black Rock").

B. Black Rock is subject to the terms and conditions contained in the Declaration.

C. Through Kootenai County Instrument No. 2277226000, Black Rock (as "Assignor") assigned its rights as Declarant to Washington Trust Bank (as "Assignee"), and Washington Trust Bank (as "Assignee") accepted said assignment.

D. This Conditional Assignment of Declarant Rights is made by and between Black Rock, on the one hand, and The Golf Club at Black Rock, LLC, in the nature of a conditional assignment. The conditional nature is this: in the event of any defect, whether procedural or substantive, under the Assignment of Declarant Rights recorded as Kootenai County Instrument No. 2277226000, and in the further event that any said defect (without conceding the existence of the same) results in the retention of Declarant rights by Black Rock, then Black Rock assigns, and does hereby assign, said rights to The Golf Club at Black Rock, LLC through this Assignment.

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the parties agree as follows:

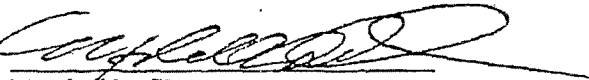
ASSIGNMENT

1. Recitals. The conditions stated in the Recitals are incorporated herein.
2. Assignment of Rights. In the event of a procedural or substantive defect in the Assignment recorded as Kootenai County Instrument No. 2277226000, with said defect (without acknowledging the existence of the same) resulting in the retention of any or all of Black Rock's rights as Assignor under said document, then Assignor does hereby assign to The Golf Club at Black Rock, LLC all of said rights and The Golf Club at Black Rock, LLC, as Assignee, accepts the same and assumes all obligations of the Declarant thereunder.
3. Government Law. This Assignment shall be governed and construed in accordance with Idaho law with venue in Kootenai County.
4. Counterparts. This Assignment may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute but one and the same Assignment.
5. Authority of Parties. Each person executing this Assignment on behalf of a party represents and warrants that they have the full power and authority to execute this Assignment on behalf of that party, and that no further approval of any kind is necessary to bind the parties thereto.
6. Successors and Assigns. Each of the rights, benefits, duties, liabilities, and obligations of the parties hereto shall inure to the benefit of, and be binding upon, their respective successors and assigns.
7. Acknowledgment. The parties hereto acknowledge that The Golf Club at Black Rock, LLC intends to take title to all or part of the Property, as that phrase is defined in the Declaration, under Article 27.7 of the Assignment.

ASSIGNOR:

BLACK ROCK DEVELOPMENT, INC.

By:



Marshall R. Chesrown

Its:

President

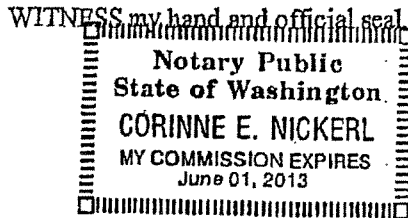
ASSIGNEE:

THE GOLF CLUB AT BLACK ROCK, LLC

By: _____
Roger Rummel
Its: Managing Member

STATE OF Washington)
) ss:
COUNTY OF Spokane)

On this 5th day of ~~October~~ ^{November}, 2010, before me, the undersigned, a Notary Public in and for the said State and County, personally appeared **Marshall R. Chesrown**, known or identified to me to be the President of Black Rock Development, Inc., the person whose name is subscribed to the within instrument and who acknowledged that he is authorized to execute the same.



Corinne E. Nickler
Notary Public in and for the State of WA
Residing at: Spokane, WA
My commission expires: 6/01/13

STATE OF IDAHO)
) ss:
COUNTY OF KOOTENAI)

On this _____ day of October, 2010, before me, the undersigned, a Notary Public in and for the said State and County, personally appeared **Roger Rummel**, known or identified to me to be a Managing Member of The Golf Club at Black Rock, LLC, the person whose name is subscribed to the within instrument and who acknowledged that he is authorized to execute the same.

WITNESS my hand and official seal.

Notary Public in and for the State of Idaho
Residing at: _____
My commission expires: _____

BLACK ROCK.ASSIGNMENT.wpd

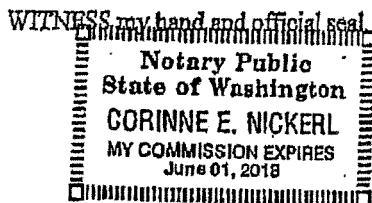
ASSIGNEE:

THE GOLF CLUB AT BLACK ROCK, LLC

By: Roger Rummel
Roger Rummel
Its: Managing Member

STATE OF Washington
COUNTY OF Spokane

On this 5th day of November, 2010, before me, the undersigned, a Notary Public in and for the said State and County, personally appeared Marshall R. Chesrown, known or identified to me to be the President of Black Rock Development, Inc., the person whose name is subscribed to the within instrument and who acknowledged that he is authorized to execute the same.

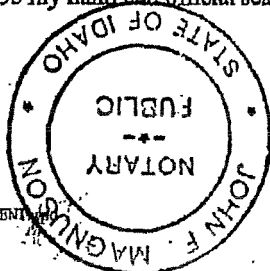


Corinne E. Nickert
Notary Public in and for the State of WA
Residing at: Spokane, WA
My commission expires: 6/01/13

STATE OF IDAHO)
COUNTY OF KOOTENAI)

On this 5th day of November, 2010, before me, the undersigned, a Notary Public in and for the said State and County, personally appeared Roger Rummel, known or identified to me to be a Managing Member of The Golf Club at Black Rock, LLC, the person whose name is subscribed to the within instrument and who acknowledged that he is authorized to execute the same.

WITNESS my hand and official seal.



BLACK ROCK ASSIGNMENT

John F. Magnuson
Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 9/10/14

Kootenai County Title Company
1450 Northwest Boulevard, Ste. 200
Coeur d'Alene, ID 83814

Dear Sir or Madam:

Enclosed on behalf of the undersigned please find a Membership Agreement with attached Membership Plan, which are being delivered to you in trust subject to the following instructions.

It is the undersigned's intention to join The Golf Club at Black Rock if a notice of termination is given as to the existing Membership Plan under which I am a member of The Club at Black Rock. We are advised that The Golf Club at Black Rock, LLC ("Buyers") is acquiring substantially all of the Club's assets, which transaction will be evidenced by your recording the conveyance deed and delivering all other required funds and documents (the "Closing").

Notice to The Club at Black Rock's current members that our membership in The Club at Black Rock is being terminated is a precondition to our joining The Golf Club at Black Rock. When we receive that notice, we will provide confirmation to you.

You may deliver to Buyer the enclosed documents and the funds we previously delivered to you ("My Funds") only upon the occurrence of all of the following:

- (1) Written confirmation from Buyers or the undersigned that a notice of termination has been given as to our existing membership in The Club at Black Rock;
- (2) Your receipt on our behalf from The Golf Club at Black Rock of one fully executed original of the enclosed Agreement, which you are irrevocably committed to deliver to us; and
- (3) You have in your possession and are irrevocably committed to record and deliver to Buyer and Seller all funds and fully executed original documents required for Closing.

In the event Closing has not occurred on or before November 15, 2010, you are to contact the undersigned for further instructions. If you are advised the Closing will not occur, you are instructed to return the enclosed documents and My Funds in immediately available funds to the undersigned at the address below.

0660

Page 2

You may proceed as set forth above if you promptly execute and return to the undersigned a copy of this letter signed by an authorized officer of the Company, to evidence your agreement to the foregoing instructions.

Dated: _____, 2010.

By: _____

Printed Name: _____

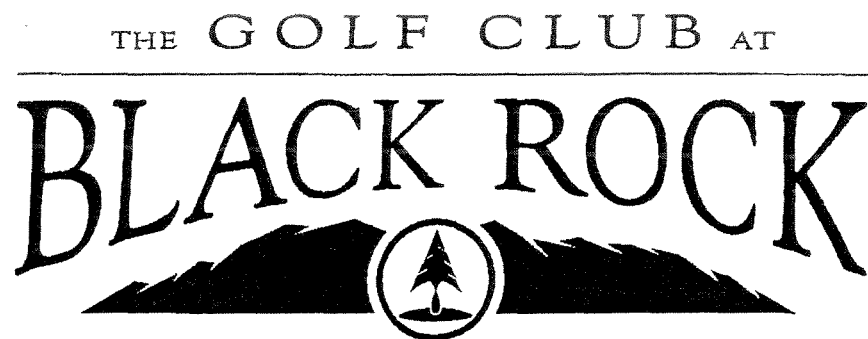
Address: _____

Receipt of the above-referenced funds is acknowledged, and the Company agrees to hold such funds expressly subject to the above instructions.

KOOTENAI COUNTY TITLE COMPANY

By: _____

Its: _____



MEMBERSHIP AGREEMENT

(Initial Offering)

I. INFORMATION

PERSONAL

Member's Name _____

Social Security Number _____ Birth Date _____

E-mail Address _____ Cell Number () _____

Spouse's Name _____ Birth Date _____

Social Security Number _____ Anniversary Date _____

E-mail Address _____ Cell Number () _____

Local Address _____

Out of Town Address _____

Billing Address _____

Club Communications
Address _____

Telephone:
Residence () _____ Fax Number () _____

Unmarried children through the age of 25:

<u>Name</u>	<u>Birth Date</u>	<u>Charge Privileges</u>
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>
_____	_____	Yes <input type="checkbox"/> No <input type="checkbox"/>

Extended family members (children not listed above, parents, grandparents, brothers, sisters, and spouses of the same who will have family guest privileges):

	<u>Name</u>	<u>Relationship</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____
6.	_____	_____
7.	_____	_____
8.	_____	_____
9.	_____	_____
10.	_____	_____

II. MEMBERSHIP ACQUISITION

I wish to acquire a Charter, Full, or Social Membership in The Golf Club at Black Rock (the "Club"). The Club is an entity that is distinct, separate, and unrelated to any prior entity owning or operating at or under or on the Black Rock name, facilities, or properties, with no obligations or duties under any prior Membership Plan or Plans. The facilities that comprise the Club are to be owned and operated by the Golf Club at Black Rock, LLC, an Idaho limited liability company (referred to herein as the "LLC"). The phrase "Investor in the Club," as used herein, shall be understood to refer to the following parties associated with the LLC: the Managing Members of the LLC; the Members of the LLC; the Equity Owners of the LLC; the Equity Investors in the LLC; and the Managing Members, Members, Shareholders, Trustees, Beneficiaries, Shareholders, Directors, and/or Officers of any entity that is itself an Equity Owner, Member, Manager, or Investor in or of the LLC. I agree to pay the Membership Fee required to acquire the Membership as selected below, plus sales tax. I understand that the following options are available only if I submit this Membership Agreement to the Club during an initial offering period ending September 30, 2010 ("Offering Period") which may be extended by the Club in its sole and absolute discretion.

[Check one of the below options]

- ☐ Charter Membership. I agree to pay a refundable Membership Fee of \$25,000 in one payment payable with this Membership Agreement, plus 6% sales tax.

or

- ☐ Full Membership. I agree to pay a Membership Fee of \$30,000, which shall consist of a \$5000 non-refundable Membership Fee and a \$25,000 refundable Membership Fee in installments as follows:
- a. \$5,000, plus 6% sales tax on the entire \$30,000 is due and payable with this Membership Agreement; and
 - b. \$5,000 is due and payable on the anniversary date of the end of the Offering Period in each of the next five years.

If I fail to make any payment of the Membership Fee, when due, the Club may terminate my membership and retain as liquidated damages any amount of the Membership Fee previously paid by me. I acknowledge that if I fail to pay the payments of the Membership Fee when due, actual damage and loss to the Club resulting therefrom cannot be readily ascertainable and that retention by the Club of the portion of the Membership Fee paid by me will not constitute a penalty. Resignation of membership shall not affect or relieve my obligation to make payments hereunder. I agree that notwithstanding any provision herein, the Club shall not pay to me the Reissuance Payment indicated below after reissuance of my membership until I have paid my Membership Fee in full. I have completed and enclosed a Promissory Note for the amount owed.

or

- ☐ Social Membership. I agree to pay a non refundable Membership Fee of \$10,000 in one payment payable with this Membership Agreement, plus 6% sales tax

The Membership Fee paid by me shall be held in escrow with Kootenai Title pursuant to an Escrow Agreement until the end of the Offering Period. If the Membership Documents are revoked before the end of the Offering Period in accordance with Section VI hereof, I shall receive a refund of the Membership Fee and any sales tax thereon which I have paid under this Agreement, without interest,

within ten business days of the end of the Offering Period. If the Membership Documents are not revoked by the Club before the end of the Offering Period in accordance with Section VI hereof, the Membership Fee shall be released to the Club at closing. The Escrow Agreement is available for review in the Membership Office.

Charter Members shall have the following special benefits: 6 unaccompanied rounds per year, and special recognition in the Membership Roster, Member Website and in the Clubhouse.

III. PAYMENT OF DUES, FEES AND CHARGES

I hereby agree to pay to the Club the membership dues, fees and charges, including any applicable sales tax, or other taxes, for my membership category. The current amount of dues, fees and charges is described on a separate Schedule of Dues, Fees and Charges, and is subject to change. I hereby request that all dues, fees and charges be billed directly to my club account. In the event that any amounts owed to the Club are not paid on a timely basis, I understand that I may be charged a late fee in accordance with the Rules and Regulations.

IV. REFUND OF MEMBERSHIP FEE; PAYMENT AFTER RESIGNATION

Applicable to Charter and Full Members: The following paragraphs shall apply to Charter and Full Members only.

The Club shall repay to me 100% of the Membership Fee paid by me, without interest, 30 years after the member's admission to the Club ("Maturity Date"), unless prepaid before the Maturity Date, as set forth below. Full Members shall be repaid only the refundable portion of their membership fee. Sales tax paid by the Member shall not be refundable.

I will be paid within 30 days after I have resigned my membership and the membership has been reissued by the Club in accordance with the Club's Membership Plan with exhibits ("Membership Documents") 50% of the Membership Fee actually paid by the new member ("Reissuance Payment"). The Club's obligation to pay the Reissuance Payment shall be subject to set-off for all amounts due under the Membership Documents which remain unpaid as of the date of reissuance.

I understand that my obligation to continue to pay dues after my resignation is as set forth in the accompanying Membership Plan. I further understand that I will be obligated to pay a refundable fee in an amount established by the Club to have my membership placed on the Resigned Membership Waiting List as described in the Membership Documents.

The Club shall be obligated to pay the Reissuance Payment only after the membership has been reissued to a successor Member who has paid the required Membership Fee in full to the Club. The Club, in its sole and absolute discretion, may pay the Reissuance Payment prior to the payment of the Membership Fee in full by a successor Member.

If my membership is resigned and reissued before the end of the Maturity Date, and the amount of Reissuance Payment equals or exceeds the amount of refundable Membership Fee that was paid by me, the Membership Fee shall be deemed repaid to the member and the member shall not be entitled to any additional amount at the Maturity Date. If the amount of Reissuance Payment is less than the refundable Membership Fee that was paid by me, the Club shall be required to repay to me at the Maturity Date only the difference between the refundable Membership Fee and the Reissuance Payment.

If I resign after the Maturity Date and was repaid the Membership Fee at the Maturity Date, I shall be paid upon reissuance of the resigned membership the difference between the Reissuance Payment and Membership Fee that was repaid to me at the Maturity Date.

Applicable to Social Members: The following paragraph shall apply to Social Members only.

I shall not be entitled to any refund of my Membership Fee under any circumstances, including after resignation, death, 30 years or termination of membership.

V. ACKNOWLEDGMENT OF MEMBERSHIP RIGHTS

I acknowledge that membership in the Club permits the member to use the Club facilities referred to in the Membership Plan in accordance with the Membership Documents. Membership in the Club, is not an investment in The Golf Club at Black Rock, LLC, (the "LLC"), or the Club facilities, does not create or constitute a real property interest, and does not give a member a vested or prescriptive right or easement to use the Club facilities. Membership in the Club does not provide a member with an equity or ownership interest or any other property interest in the LLC or the Club facilities. A member only acquires a revocable license to use the Club facilities in accordance with the terms and conditions of the Membership Documents, as the same may be amended from time to time, and this Membership Agreement. All rights and privileges of members under the Membership Documents and this Membership Agreement are subordinate to the lien of any mortgage that may hereafter encumber the Club facilities. Notwithstanding the same, no mortgage shall be placed on the Club facilities prior to September 30, 2012. The LLC reserves the right to place a mortgage on the Club facilities after that date to the extent that it deems it reasonably necessary subject to the following limitations: (a) at no time will any mortgage or security interest be put on or in the assets of the Club for any reason other than for major capital improvements and further provided that the cumulative amount of all such encumbrance(s) shall never exceed the total sum of \$2 million; (b) all obligations secured by any such mortgage or security interest, as described in subsection (a) immediately preceding, shall be repaid in full before any Investor in the LLC is repaid the capital he, she, or it contributed to the LLC; and (c) no Investor in the LLC will be allowed to individually encumber the assets of the Club. The Club reserves the right, at its sole discretion, to terminate the Membership Documents, to reserve memberships, to sell, lease or otherwise dispose of the Club facilities in any manner whatsoever and to any person whomsoever, to add, issue, modify or terminate any type or category or class of membership, to discontinue operation of any or all of the Club facilities, to convert the Club into a membership-owned club, and to make any other changes in the terms and conditions of the membership or the Club facilities available for use by members. Notwithstanding the foregoing, in the event the LLC determines to sell any or all of the Club facilities, and receives a bona fide third-party offer for the same, which is acceptable to the LLC, the then existing Members of the Club, collectively, shall have a right of first refusal to purchase the facilities encompassed by said offer. Said right of first refusal shall grant the then-existing Members the right to give written notice, within sixty (60) days, that they agree to close on the same terms and conditions as the third-party offer. Said sixty (60) day period shall commence to run upon the Members' physical receipt of a copy of the third-party offer and copies of whatever due diligence materials were provided to the third-party offeror. For purposes of this section, the Members shall designate a Member liaison or committee of Members for purposes of receipt, distribution, and consideration of the materials to be provided hereunder regarding said third-party offer. Service of the required materials on the Member liaison or committee shall constitute service on the Membership that said parties represent. In the event the third-party offer deemed acceptable by the Club is for the purchase of less than all of the Club facilities, and in the further event the Members do not exercise their right of first refusal as to the same, the right of first refusal shall nonetheless remain prospectively enforceable, in accordance with the terms herein, as to the remainder of the Club facilities. The right of first refusal as described herein shall be memorialized by a notice of the terms thereof, recorded against the Club facilities with the Kootenai County Recorder. Upon termination of the Membership Plan or a member's category of membership or discontinuance of operation of all or substantially all of the Club Facilities, the Club will refund to Charter Members and Full Members their Membership Fees.

I hereby acknowledge that the use of the Club facilities and any privilege or service incident to membership is undertaken with knowledge of risk of possible injury. I hereby accept any and all risk of injury to myself, my guests and my family sustained while using the Club facilities or while involved in any event or activity incident to membership in the Club. I agree to release and indemnify the Company

doing business as the Club, and its successors and assigns and their respective directors, officers, partners, members, shareholders, employees, representatives and agents and the members of the Advisory Committee of the Club and any Club committee in accordance with the provisions of the Rules and Regulations of the Club so long as the conduct to which the indemnification applies is not the result of gross recklessness or criminal misconduct.

VI. MEMBERSHIP DOCUMENTS AND OTHER DOCUMENTS

I hereby acknowledge that the Club may revoke Membership Documents before the end of the Offering Period. Notice of revocation shall be sent to members who have submitted a Membership Agreement to the Club and the Escrow Agent by mail or email within one business day of such revocation.

I hereby acknowledge receipt of Membership Documents and that I have read and understand them, and agree to be bound by the terms and conditions thereof as the same may be amended from time to time by the Club. Notwithstanding the foregoing, while the Membership Documents may be amended in the manner specified therein, and subject to the express limitations contained therein, this Membership Agreement may not be modified by either party without the written consent of both the Member and the Club. I further acknowledge that I am not relying on any oral representations in acquiring a membership in the Club.

I have inspected all documents and obtained all information that I believe necessary to my decision to execute this Membership Agreement, including the Escrow Agreement, all of which are available for review at the Membership Office. I further acknowledge that I have the right to consult with an attorney in connection with the execution of this Membership Agreement, and that I have consulted with an attorney to the extent I believe such advice is necessary. I specifically grant the Club a security interest in any amounts which it may owe me under the Membership Documents to secure all amounts owed by me to the Club.

If I have acquired any present or prior rights or privileges in the facilities that are to be operated and owned as the "Club" by the "LLC," as those phrases are defined herein, including but not limited to any rights, privileges, or claims as to any deposit made under or by virtue of any Membership Agreements, Membership Plans, or any agreements associated therewith (including but not limited to any Membership Agreements or Membership Plans with The Club at Black Rock, LLC or The Club at Black Rock), then I agree as follows. First, I irrevocably release and discharge the Club, the LLC, and the Investors in the Club from any and all claims and causes of action of any kind or nature, whatsoever, that I may have or have had as a result of any prior Membership Agreement or Membership Plan pertaining to the Club's facilities, including but not limited to any claim for the return of any deposit associated with or made under said Membership Agreement and/or Membership Plan. Second, as to any prospective membership privileges or rights I may have in the Club facilities, said privileges and rights shall be exclusively governed by this Membership Agreement and the Membership Documents, as amended from time to time. Third, I acknowledge that any dispute in connection with membership privileges at the Club arising under this Membership Agreement and the Membership Documents shall be subject to binding arbitration.

VII. MISCELLANEOUS

This Membership Agreement is irrevocable by me after the Offering Period.

The Club may pledge or assign this Membership Agreement.

This Membership Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Idaho without giving effect to principles of conflicts of law.

If the member is married, the signatures of both spouses are required.

An Addendum to this Agreement ☐ is/☐ is not attached.

Dated: _____, 20__

Member's Signature

Dated: _____, 20__

Spouse's Signature

This Membership Agreement shall not be binding on the Club until the acceptance below is signed.

ACCEPTED BY:

THE GOLF CLUB AT BLACK ROCK, LLC, d/b/a THE
GOLF CLUB AT BLACK ROCK

By: _____
Authorized Representative

Dated: _____, 20__

THE GOLF CLUB AT BLACK ROCK
18168 S KIMBERLITE DRIVE
COEUR D'ALENE, IDAHO 83814
(208) 676.8999



October 29, 2010

Member

Re: The Club at Black Rock, LLC

Dear Member:

As you may be aware, The Club at Black Rock, LLC entered into an agreement with Washington Trust Bank under which certain assets of The Club at Black Rock, LLC, were transferred to the bank through a deed in lieu of foreclosure, with the bank committing to fund cash shortfalls through the 2010 season, based on your continuing support of the Club.

The interest of Washington Trust Bank in the assets of The Club at Black Rock, LLC is now held by West Sprague Avenue Holdings, LLC ("West Sprague"), which has provided financial support to The Club at Black Rock, LLC since the deed in lieu transaction. We have been advised by West Sprague that no funding for cash shortfalls for The Club at Black Rock, LLC will be provided after October 31, 2010. As a result of these circumstances, The Club at Black Rock, LLC is terminating all membership agreements effective at 5:00 p.m. on October 31, 2010.

Very truly yours,

THE CLUB AT BLACK ROCK, LLC

Marshall R. Chesrown
Managing Member

P.O. BOX 3070 COEUR D'ALENE, ID 83816

P: 208.666.2005 F: 208.887.5071 TOLL FREE: 866.239.6750

WWW.BLACKROCKDEVELOPMENT.COM

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Unsubscribe from future marketing messages from Black Rock

This message has been scanned for viruses and dangerous content by MailScanner, and is believed to be clean.

0671

FYI

Ryker Young
LoneOak Ventures Inc
ryker@loneoakventures.com

Begin forwarded message:

From: "THE GOLF CLUB AT BLACK ROCK" <danetteh@blackrockidaho.com>
Date: November 1, 2010 6:48:49 PM CDT
To: ryker@loneoakventures.com
Subject: News from The Golf Club at Black Rock
Reply-To: danetteh@blackrockidaho.com

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED

2011 OCT 19 PM 2:39

CLERK DISTRICT COURT

DEPUTY *[Signature]* *[Signature]*

Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company;
ROBERT C. SAMUEL; a married man;
JOE K. DONALD AND LISBETH
LILLEMOR DONALD, husband and
wife; WAYNE A. GIANOTTI AND
CAROLYN M. GIANOTTI, Trustees of
the Gianotti Revocable Trust U-A dated
January 29, 1991; RUSSELL M. WICKS
AND EVELYN L. WICKS, husband and
wife; BUDDY C. STANLEY AND
JUDITH L. STANLEY, Trustees of the
Stanley Family Trust dated February 26,
2004; CRAIG R. FALLON AND M.
ELLEN FALLON, husband and wife,

Plaintiffs/Counter-
Defendants,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant/Counterclaimant.

CASE NO. CV-11-2786

NOTICE OF HEARING

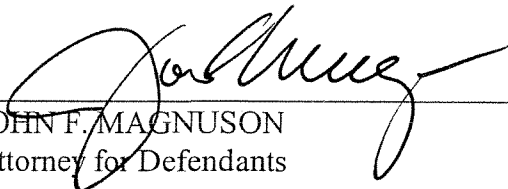
TO: PLAINTIFFS/COUNTERCLAIM DEFENDANTS;

AND TO: YOUR ATTORNEYS OF RECORD, PETER J. SMITH, IV and LUKINS & ANNIS, P.S.

YOU AND EACH OF YOU will please take notice that Defendant/Counterclaim Plaintiff The Golf Club at Black Rock, LLC will call on for hearing its Motion for Summary Judgment before the Honorable John T. Mitchell, District Judge, at the Kootenai County Courthouse, on November 16, 2011 at 4:00 p.m.

You are invited to attend and participate as you deem appropriate.

DATED this 19th day of October, 2011.

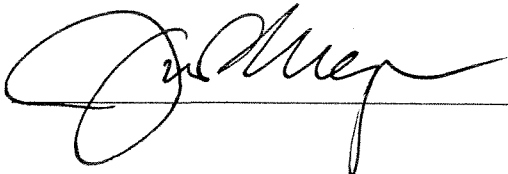

JOHN F. MAGNUSON
Attorney for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of October, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155
Email: pjs@lukins.com

 U.S. MAIL
 X HAND DELIVERED
 OVERNIGHT MAIL
 FACSIMILE
 (208) 664-4125



BR-GOLF CLUB-SKY CANYON.NOT HRG.wpd

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

STATE OF IDAHO
COUNTY OF KOOTENAI
FILED: ss

2011 NOV -3 PM 4:41

CLERK DISTRICT COURT

Debra Zook
DEPUTY *pb*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Plaintiffs,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant.

NO. CV-11-2786

**MEMORANDUM IN OPPOSITION
TO MOTION FOR SUMMARY
JUDGMENT OF
PLAINTIFFS/COUNTERCLAIM
DEFENDANTS**

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Counterclaim Plaintiff,

vs.

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
DONALD AND LISBETH LILLEMOR
DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29,
1991; RUSSELL M. WICKS AND
EVELYN L. WICKS, husband and wife;
BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Counterclaim Defendants.

COMES NOW Defendant/Counterclaim Plaintiff The Golf Club at Black Rock, LLC, by and through its attorney of record, John F. Magnuson, and respectfully submits this Memorandum in opposition to the "Motion for Summary Judgment" filed October 19, 2011 by the above-identified Plaintiffs/Counterclaim Defendants. This Memorandum is supported by the pleadings and submissions on file herein, together with the submissions filed by The Golf Club in support of its Motion for Summary Judgment (also filed October 19, 2011), as well as the submissions filed by Plaintiffs in support of their Motion for Summary Judgment.

I. INTRODUCTION

Through their respective Motions, the parties have set forth in adequate detail the material facts giving rise to this dispute. The issue crystalized by the parties' competing submissions can be stated as follows: Has The Golf Club satisfied the requirements of Article 27.7 of the CC&Rs so as to qualify as the "Successor Declarant," as defined by Article 2.50 thereof? That is the issue addressed by this Memorandum.

II. ARGUMENT.

A. The Period of Declarant Control Remains in Effect.

The "Period of Declarant Control" is defined by Article 2.43 of the CC&Rs as follows:

The period beginning on the date this Declaration is first recorded [July 31, 2001] and ending on the earlier of: (a) the date which is 20 years later, or (b) the date on which the Declarant has recorded the plats of all Expansion Property and sold 90% of the Lots to Owners other than Declarant or Builder in each of the Plats. When Declarant has determined that no additional property shall be considered Expansion Property, Declarant shall so notify the Association in writing

See Magnuson Affidavit at Ex. A, p. 6, Article 2.43.

Consistent with the foregoing, the Declarant retains the right to annex additional properties into the Project, as Expansion Property, until the period of Declarant Control is completed. Moreover, the period of Declarant Control does not end until July 31, 2021 (twenty (20) years from the recordation date of the CC&Rs) or the Declarant's relinquishment of its right to add Expansion Property.

22.2 Completion of Expansion. When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the Association in writing. Until such notice

is given, Declarant retains the right to designate additional property as Expansion Property.

See Magnuson Affidavit at Ex. A., p. 7, Article 22.2.

The following facts are undisputed. First, neither Black Rock Development (as the original Declarant) nor The Golf Club at Black Rock (as the claimed Successor Declarant) have given notice in writing to the Association relinquishing “the right to designate additional property as Expansion Property.” Second, as such, the period of Declarant Control remains in effect until July 31, 2021 or such earlier date as The Golf Club, as Successor Declarant, might give notice to the Association that no additional Expansion Property will be pursued.

B. The Definition of “Property” Includes Both the “Club Property” and “Expansion Property.”

The CC&Rs define “Property” as including the following:

[T]he property described on Exhibit “A” [to the CC&Rs] and initially subjected to this Declaration [including the “Club Property”], and also refers to any Expansion Property that may be incorporated in the Project from time to time and made subject to these Covenants pursuant to the provisions of this Declaration.

See Magnuson Affidavit at Ex. A, p. 7, Article 2.47 (emphasis added). This definition is significant in two respects.

First, the definition of “Property” in Article 2.47 includes “Club Property.” In other words, the “Club Property” is “Property” for purposes of the CC&Rs. The Plaintiffs acknowledge the same: “Plaintiffs admit there is no question that Defendant took title to part of the Property.” See Plaintiffs’ Memorandum (filed October 19, 2011) at p. 9.

Second, the definition of “Property” includes any future or potential Expansion Property that may be added at any point in time during the period of Declarant Control. Id. at Article 2.47. The

Assignments of Declarant Rights that The Golf Club received were assignments of all Declarant Rights alternatively held by West Sprague Avenue (as successor to Washington Trust Bank) or Black Rock Development. See Magnuson Affidavit at Exs. I and J.

Put another way, The Golf Club acquired two (2) separately-defined portions of "Property," as that phrase is defined in Article 2.47 of the CC&Rs: (1) the Club Property; and (2) future Expansion Property as may be determined by the Declarant or the Successor Declarant during the remaining period of Declarant Control.

C. The Golf Club Qualifies as the "Successor Declarant" Under Article 2.50.

1. The Requirements of Article 2.50.

Article 2.50 defines "Successor Declarant" as any entity:

to whom Declarant assigns any or all of its rights, obligations or interests as Declarant, as permitted by Section 27.7 and evidenced by an assignment . . . of record in the office of the Recorder of Kootenai County, Idaho

See Magnuson Affidavit at Ex. A, p. 7, Article 2.50.

Article 27.7, as referenced in Article 2.50, provides in part:

Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale

Id. at p. 63, Article 27.7.

2. **There is No Disputed Issue of Fact that The Golf Club Has Satisfied the Requirements of Article 27.7 Based on Its Purchase of the “Club Property.”**

(i) **The “Club Property” Purchased by The Golf Club Constitutes “Property” for Purposes of Article 27.7.**

There is no dispute that the “Club Property” purchased by The Golf Club is part of “the Property” as defined in the CC&Rs. Plaintiffs concede as much. “Plaintiffs admit there is no question that Defendant took title to part of the Property.” See Plaintiffs’ Memorandum (filed October 19, 2011) at p. 9.

(ii) **There Is No Disputed Issue of Fact that Defendant Purchased “Property” In Bulk.**

Defendant purchased The Club Property (part of the “Property”) and contemporaneously received an Assignment of other “Property,” as that phrase is defined in the CC&Rs, through the right to add “Expansion Property.” The Assignments of Declarant Rights (Magnuson Affidavit at Exs. I and J) were unlimited in scope. They included all Declarant Rights. That would include the right to add “Expansion Property” for the remaining period of the initial twenty (20) year term of the CC&Rs. The prima facie purpose for adding such additional Expansion Property, if and when determined by The Golf Club as Successor Declarant, would be for purposes of development and sale.

So, The Golf Club acquired the Club Property (part of “the Property”) and rights to the Expansion Property (also part of “the Property”). The question raised by Plaintiffs is whether or not this acquisition was “in bulk.” Plaintiffs posit, with little supporting authority, that “bulk” must mean undeveloped land reserved for future subdivisions. That definition could certainly apply to

Expansion Property, and The Golf Club received the right to add Expansion Property as part of the Assignments.

Confining the inquiry to the Club Property, we can also see that the undisputed material facts show that the transaction was one “in bulk” for purposes of satisfying requirements of Article 27.7. “Bulk” in the context of Article 27.7 is a descriptive term. Black’s Law Dictionary defines a bulk sale (which by necessity results in a corresponding bulk purchase) as:

Any transfer in bulk, and not in an ordinary course of the transferor’s business, of a major part of the materials, supplies, merchandise or other inventory of an enterprise.

Alternatively, Black’s Law Dictionary defines a bulk sale (and by inference the corresponding bulk purchase) as, “A sale of substantially all of the inventory of a trade or business to one person and one transaction.” Typically, “bulk” in this context can imply or carry with it an added discount.

The Golf Club purchased 206 +/- acres (including a Clubhouse, all associated equipment, fixtures, inventories, and the like), which was part of a larger 659 +/- acre parcel defined as “the Property,” for the bulk price of \$6,000,000. See Rummel Affidavit at ¶ 23. See also Second Affidavit of John F. Magnuson (filed herewith). The property simultaneously closed include the “Beach Club,” which was purchased for \$1,500,000. Both properties were purchased “in bulk,” with all related personal and real property components. The total purchase price of \$7,500,000 acquired property that was assessed by Kootenai County, as of January 1, 2011, sixty (60) days after the closing, at \$14,465,900. In other words, the bulk purchase resulted in a bulk discount of some fifty percent (50%).

The competing definition offered by Plaintiffs produces the same result. Plaintiffs define “bulk” from the Merriam-Webster Dictionary as “not divided in parts or packaged in separate units,”

or “in large quantities.” As the Court can see from Exhibit B to the Magnuson Affidavit (filed October 19, 2011), the 206 +/- acres purchased by The Golf Club consists of seven (7) parcels, ranging in size from 2.2 acres to 26 acres to 30 acres to 142 acres. Plaintiffs accordingly suggest “that a ‘bulk purchase’ referred to the purchase of raw land within Black Rock that would be subdivided, developed, and sold.” See Plaintiffs’ Memorandum at p. 11. That definition would or could apply to the “Club Property.”

The Golf Club purchased raw land that is capable of being subdivided, developed, and sold, whether as part of a larger golf course operation or independent of a golf course operation. There is no requirement in the CC&Rs that the “Club Property” be maintained in a static condition as it presently exists. Of the 206 +/- acres, portions can be developed at the election of The Golf Club for purposes of development and sale. The entire “Club Property” could be developed as residential property in the event The Golf Club determined that it was no longer financially feasible to operate the same as a golf course. In fact, Plaintiffs’ entire argument rings rather hollow when one considers that the Membership Agreement distributed to prospective members of The Golf Club prior to The Golf Club’s closing of its purchase specifically stated:

The Club reserves the right, at its sole discretion . . . to sell, lease or otherwise dispose of the Club facilities in any manner whatsoever and to any person whomsoever, . . . to discontinue operation of any or all of the Club facilities . . . and to make any other changes in the terms and conditions of the membership or Club facilities available for use by members.

See Magnuson Affidavit (filed October 19, 2011) at Ex. L.

Simply put, whether dealing with “the Club Property,” or “Expansion Property,” or both “Club Property” and “Expansion Property,” there is no disputed issue of fact that the same were

required by The Golf Club in bulk (based on the definition proffered by The Golf Club (based upon Black's Law Dictionary) or the definition proffered by Plaintiffs) (based upon the Merriam-Webster Dictionary)). Every property right that currently exists, or that could exist in the future (through Expansion Property), was purchased in one lump and bulk transaction at a bulk discount of fifty percent (50%) off of the assessed valuation. Indeed, the entire argument advanced by Plaintiffs is inconsistent. Consider that Plaintiffs themselves acknowledge, at page 12 of their Memorandum, "The land purchased by Defendant was held in bulk and reserved for future subdivision under the Plat or any of the Additions." See Plaintiffs' Memorandum (filed October 19, 2011) at p. 12. The Defendant does not disagree that it purchased property in bulk, as acknowledged by Plaintiffs, and that the same could be used for future subdivision at The Golf Club's election. That resolves the issue.

(iii) **The Golf Club Has Satisfied the
"Development and Sale" Requirement of
Article 27.7.**

The Golf Club has satisfied the "development and sale" requirement of Article 27.7, so as to qualify as the "Successor Declarant," for no less than three reasons. First, the "development and sale" language of Article 27.7 does not require that the real property itself be "developed and sold." It merely requires that the property be purchased "for development and sale." The facts are undisputed that following acquisition of the Club Property (itself a portion of the Property), The Golf Club developed a Membership Plan and sold some 172 such memberships. See Rummel Affidavit at ¶ 18. This alone satisfies the "development and sale" requirement.

If the requirement is limited to the development and sale of real property, then The Golf Club has equally satisfied the requirements of Article 27.7. Simply put, there is no disputed issue of fact

that The Golf Club has the ability to develop and sell portions of the 206 +/- acre parcel that included, for any residential or other purpose not otherwise proscribed by the CC&Rs. This can be as an alternative to the operation as a golf club or in tandem with the same. All prospective members, including the Plaintiffs, were advised of this through the proposed Membership Agreement that was circulated pre-closing. See Magnuson Affidavit at Ex. L.

Moreover, it is undisputed, based upon the portions of deposition testimony of Roger Rummel as cited by Plaintiffs (entirely consistent with the Affidavit testimony of Mr. Rummel), that the Club Property was purchased with dual intentions in mind. First, the primary goal was to develop and sell memberships. See Rummel Affidavit at p. 38, ll. 15-22 (attached as Exhibit A to the Affidavit of Peter Smith filed October 19, 2011).

Second, if The Golf Club could not be profitably operated, The Golf Club retained the right to develop and sell The Golf Club property proper. Against this background, it is difficult to understand how Plaintiffs can continue to protest that The Golf Club did not purchase 206 +/- acres of "the Property" in bulk for purposes of development and sale.

Third, if there is a question of fact as to The Golf Club's intention in purchasing the property, so as to call into question compliance with the requirements of Article 27.7, then the question of fact is not "at issue." Simply put, Mr. Rummel was deposed and offered his testimony (cited by Plaintiffs) that The Golf Club's goals in purchasing the Club Property were to develop and sell memberships or to develop and sell the real property, depending upon which options presented themselves to The Golf Club and at which point in time. That is entirely consistent with Mr. Rummel's Affidavit testimony, wherein he stated:

“[I]n the event that [the development and sale of memberships] no longer prove to be financially feasible or successful, at some future point in time, then The Golf Club intended to retain all rights to develop and sell the “Club Property” in a manner compliant with the CC&Rs.”

See Rummel Affidavit at ¶ 19. The Plaintiffs have shown no issue of fact with respect to this professed intention. Simply put, if the intention of The Golf Club, in acquiring the Club Property, presents a question of fact, it is a question of fact that has not been placed “in issue” with any admissible evidence through the cross-motions for summary judgment. Accordingly, summary judgment should be entered in favor of The Golf Club.

3. **The Golf Club Has Satisfied the Requirements of Article 27.7 as to “Expansion Property.”**

The foregoing discussion focused on “the Club Property,” and the fact that The Golf Club’s purchase of the same complied with the requirements of Article 27.7 so as to confer Successor Declarant status upon The Golf Club. The Court should not lose sight of the fact that, based upon the all-inclusive Assignments of Declarant Rights, The Golf Club contemporaneously acquired all rights associated with all potential “Expansion Property.” This component of the purchase, regardless of The Golf Club’s acquisition of the Club Property, satisfied the requirements of Article 27.7.

First, “Expansion Property” constitutes “Property” for purposes of the CC&Rs. Second, the right to add Expansion Property has not been terminated in conformity with the requirements of the CC&Rs. Third, the right to add Expansion Property (itself “Property”) was transferred to The Golf Club as part of the purchase. Fourth, whether or not the purchase of the “Club Property” was in bulk, one cannot claim that the “Expansion Property” was not acquired in bulk. All such rights were

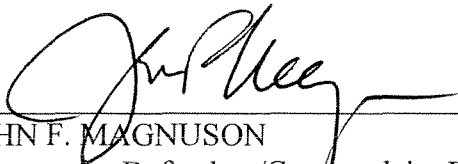
acquired. Fifth, the only purpose for acquiring "Expansion Property" would be for development and sale.

Based upon the foregoing, there is no issue of fact that The Golf Club, in acquiring the Declarant Rights as "Expansion Property," for the remaining term of the Declarant period of control, acquired property in bulk for purposes of development and sale so as to satisfy the requirements of Article 2.50 and 27.7.

III. CONCLUSION.

Based upon the reasons and authorities set forth herein, The Golf Club at Black Rock, LLC, as both Defendant and Counterclaim Plaintiff, request entry of summary judgment in its favor, ordering, adjudging, and decreeing that The Golf Club is the holder of the Declarant Rights under the CC&Rs and is duly-qualified as Successor Declarant to hold the same in accordance with the terms of Articles 2.50 and 27.7 thereof.

DATED this 3rd day of November, 2011.



JOHN F. MAGNUSON
Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith IV
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155

☒ U.S. MAIL
☐ HAND DELIVERED
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☒ FACSIMILE
664-4125



BR-GOLF CLUB-SKY CANYON-OPP.BRF.wpd

JOHN F. MAGNUSON
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, ID 83814
Phone: (208) 667-0100
Fax: (208) 667-0500
ISB #04270

Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

STATE OF IDAHO } SS
COUNTY OF KOOTENAI }
FILED:

2011 NOV -3 PM 4:41

CLERK DISTRICT COURT

Debiat Zook
DEPUTY *PA*

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an
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C. SAMUEL, a married man; JOE K.
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DONALD, husband and wife; WAYNE A.
GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
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STANLEY, Trustees of the Stanley Family
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FALLON AND M. ELLEN FALLON,
husband and wife,

Plaintiffs,

vs.

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Defendant.

NO. CV-11-2786

**SECOND AFFIDAVIT OF JOHN F.
MAGNUSON IN OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT OF
PLAINTIFFS/COUNTERCLAIM
DEFENDANTS**

THE GOLF CLUB AT BLACK ROCK,
LLC, an Idaho limited liability company,

Counterclaim Plaintiff,

vs.

SKY CANYON PROPERTIES, LLC, an
Idaho limited liability company; ROBERT
C. SAMUEL, a married man; JOE K.
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DONALD, husband and wife; WAYNE A.
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BUDDY C. STANLEY AND JUDITH L.
STANLEY, Trustees of the Stanley Family
Trust dated February 26, 2004; CRAIG R.
FALLON AND M. ELLEN FALLON,
husband and wife,

Counterclaim Defendants.

STATE OF IDAHO)
) ss.
COUNTY OF KOOTENAI)

JOHN F. MAGNUSON, being first duly sworn upon oath, deposes and says:

1. I am the attorney of record for The Golf Club at Black Rock, LLC, the Defendant named herein. I have personal knowledge of the matters set forth herein and am otherwise competent to testify thereto.

2. Attached hereto as Exhibit A is a true and correct copy of the "Statement of Settlement for Purchasers" provided to The Golf Club at Black Rock, LLC when it purchased the


"Club property," exclusive of the "Beach Club," as those phrases have been utilized by the parties in their submissions on summary judgment. The purchase price for the Club property, exclusive of the Beach Club, was \$6 million, which included both real and personal property. Of this sum, \$5,800,000 was allocable to the real property and improvements.

3. Attached hereto as Exhibit B is a true and correct copy of the closing statement for the "Beach Club." The purchase price for the "Beach Club" was \$1,500,000.

4. Attached hereto as Exhibit C is a true and correct of a summary I caused to be prepared that breaks out Kootenai County's assessed valuations for the parcels of property comprising the "Club property" and the "Beach Club" property for the tax year 2011 (with an assessment date of January 1, 2011). The "Beach Club" is identified as Parcel No. 232944. The remaining seven parcels, in aggregate, constitute the "Club property."

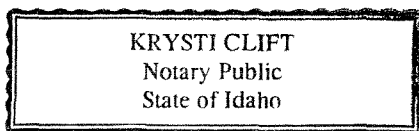
5. The assessed valuation for the "Club property" and the "Beach Club," as of January 1, 2011, according to Kootenai County, was \$14,465,900.

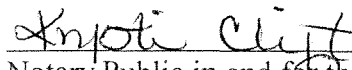
DATED this 3rd day of November, 2011.



JOHN F. MAGNUSON
Attorney for Defendant/Counterclaim Plaintiff
The Golf Club at Black Rock, LLC

SUBSCRIBED AND SWORN to before me this 3rd day of November, 2011.





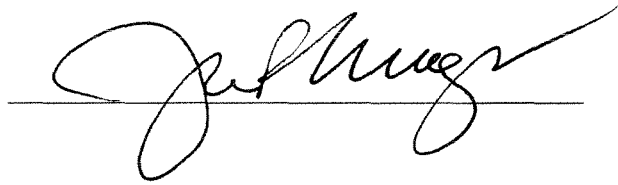
Notary Public in and for the State of Idaho
Residing at: Coeur d'Alene
My commission expires: 11/13/14

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of November, 2011, I served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Peter J. Smith IV
Lukins & Annis, P.S.
601 E. Front Avenue, Ste. 502
Coeur d'Alene, ID 83814-5155

☒ U.S. MAIL
☐ HAND DELIVERED
☐ OVERNIGHT MAIL
☒ FACSIMILE
664-4125



BR-GOLF CLUB-SKY CANYON.AFF JFM.wpd

KOOTENAI COUNTY TITLE COMPANY, INC.
STATEMENT OF SETTLEMENT FOR PURCHASERS

REVISED

ORDER NO.: 74943

PURCHASER/BORROWER(S): The Golf Club at Black Rock, LLC, an Idaho Limited Liability Company

SELLER(S): West Sprague Avenue Holdings LLC, an Idaho Limited Liability Company

SETTLEMENT DATE: November 1, 2010 DISBURSED: November 1, 2010 PRORATION DATE: November 1, 2010

PROPERTY ADDRESS: NNA, Coeur d' Alene, ID 83814

	DEBIT	CREDIT
Contract Sales Price	5,800,000.00	
Pers Prop Taxes to (13,121.46 / 365 x 61 days)	2,192.90	
Personal Property Allocation thru \$	200,000.00	
County Taxes 01/01/10 to 11/01/10 (87,486.86 / 365 x 304 days)		72,865.77
Title/Escrow services		
Settlement or closing fee to Kootenai County Title Company, Inc.	1,000.00	
Government recording charges	43.00	
Deed \$ 43.00 Mortgage \$ Releases \$		
Record Assignment Kootenai County Title Company, Inc.	13.00	
UCC Termination Kootenai County Title Company, Inc.	14.00	
Subtotals	6,003,262.90	72,865.77
Balance Due FROM Purchaser/Borrower		5,930,397.13
TOTALS	6,003,262.90	6,003,262.90

APPROVED and ACCEPTED

PURCHASER(S) / BORROWER(S):

The Golf Club at Black Rock, LLC, an Idaho
Limited Liability Company

BY: _____
Roger Rummel, Managing Member

ESCROW AGENT:

Kootenai County Title Company, Inc.

By: Keri Mitchell
Keri Mitchell

EXHIBIT A

(74943/74943/49)

0692

KOOTENAI COUNTY TITLE COMPANY, INC.
STATEMENT OF SETTLEMENT FOR PURCHASERS

ORDER NO.: 74944

PURCHASER/BORROWER(S): The Golf Club at Black Rock, LLC, an Idaho Limited Liability Company

SELLER(S): Washington Trust Bank

SETTLEMENT DATE: November 1, 2010

DISBURSED: November 1, 2010

PRORATION DATE: November 1, 2010

PROPERTY ADDRESS: 6986 W Rockford Bay Rd, Coeur d' Alene, ID 83814

	DEBIT	CREDIT
Contract Sales Price	1,500,000.00	
County Taxes 01/01/10 to 11/01/10 (13,497.62 / 365 x 304 days)		11,241.85
Title/Escrow services		
Settlement or closing fee to Kootenai County Title Company, Inc.	500.00	
Government recording charges	13.00	
Deed \$ 13.00 Mortgage \$ Releases \$		
Subtotals	1,500,513.00	11,241.85
Balance Due FROM Purchaser/Borrower		1,489,271.15
TOTALS	1,500,513.00	1,500,513.00

APPROVED and ACCEPTED

PURCHASER(S) / BORROWER(S):

The Golf Club at Black Rock, LLC

By: Roger Rummel
Roger Rummel, Managing Member

ESCROW AGENT:

Kootenai County Title Company, Inc.

By: Keri Mitchell
Keri Mitchell

EXHIBIT B

(74944/74944/24)

0693

The Golf Club at Black Rock, LLC
Analysis of Assessed Property Tax Value by Kootenai County

Attach #	Owner Name	Parcel Number	AIN #	Assessed Value YEAR 2011	Percent	Percentage of Purchase Price
A	Golf Club at BR	0077000000AA	232820	\$ 9,011,480	62.29%	4,547,509.00
B	Golf Club at BR	0077000000AB	232821	\$ 31,656	0.22%	15,975.00
C	Golf Club at BR	0077000000CC	255570	\$ 1,000	0.01%	505.00
	Golf Club at BR	007700150010	232944	\$ 1,762,698	12.19%	889,519.00
	Golf Club at BR	00776008001A	246618	\$ 3,275,034	22.64%	1,652,697.00
F	Golf Club at BR	0077800000CA	254143	\$ 183,864	1.28%	93,440.00
G	Golf Club at BR	0077800000CB	254144	\$ 184,411	1.27%	93,060.00
H	Golf Club at BR	48N04W098575	232318	\$ 13,746	0.10%	7,295.00
				\$ 14,465,900	100.00%	\$ 7,300,000

Original Purchase per Title Company on October 19, 2010

Sales Office/Beach Club	\$ 1,500,000
The Club & Golf Course	\$ 5,800,000
Total	\$ 7,300,000

Difference	\$ 7,165,900
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EXHIBIT C

0694

STATE OF IDAHO } SS
COUNTY OF KOOTENAI } 301
FILED:

2011 NOV -4 AM 8:05

CLERK DISTRICT COURT

Patty Bayless
DEPUTY *pb*

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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
limited liability company; ROBERT C.
SAMUEL; JOE K. DONALD AND LISBETH
LILLEMORE DONALD, husband and wife;
WAYNE A. GIANOTTI AND CAROLYN M.
GIANOTTI, Trustees of the Gianotti
Revocable Trust U-A dated January 29, 1991;
RUSSELL M. WICKS AND EVELYN L.
WICKS, husband and wife; BUDDY C.
STANLEY AND JUDITH L. STANLEY,
Trustees of the Stanley Family Trust dated
February 26, 2004; CRAIG R. FALLON AND
M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

MOTION TO STRIKE

MOTION TO STRIKE: 1

Pursuant to Rule 7 and Rule 56 of the Idaho Rules of Civil Procedure, Plaintiffs file this Motion to Strike the portions of the Affidavits of Roger Rummel and John F. Magnuson in Support of Defendant's Motion for Summary Judgment filed on October 19, 2011. The portions of the affidavit to be stricken and the reasons therefore are set forth below.

Affidavit Roger Rummel

Paragraph	Objectionable Statement	Objection
3.	The Club at Black Rock, LLC was an entity that previously owned certain real property and facilities that were purchased by The Golf Club and which give rise to this proceeding.	Lack of foundation; calls for a legal conclusion.
5.	The Black Rock CC&Rs encumber certain specifically-described property (also known as the Black Rock PUD), including certain specifically defined "Club Property."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
5.	The "Club Property," at the time the CC&Rs were recorded, was identified as including a golf course, a golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and other recreational facilities.	Hearsay; the document speaks for itself.
5.	The "Club Property" was made a part of the CC&Rs.	Calls for a legal conclusion; hearsay; the document speaks for itself.
5.	At that time, the "Club Property" was owned by The Club at Black Rock, LLC.	Lack of foundation; calls for a legal conclusion.
6.	The Declarant named in the CC&Rs was Black Rock Development, Inc.	Hearsay; the document speaks for itself.
6.	Black Rock Development, Inc., like The Club at Black Rock, LLC, was an entity that, to my knowledge, was owned and controlled by Marshall Chesrown.	Lack of foundation; calls for a legal conclusion.
8.	Those memberships were in the nature of revocable licenses.	Lack of foundation; calls for a legal conclusion.

MOTION TO STRIKE: 2

8.	They were not equity interests in the Club Property or the Club itself.	Lack of foundation; calls for a legal conclusion.
8.	The CC&Rs do not mandate that the Club Property, as part of the PUD, be perpetually devoted to say recreational purposes.	Calls for a legal conclusion; hearsay; the document speaks for itself.
9.	Article 17.1 of the CC&Rs notes that the golf course "will be privately owned and operated" and is "not a part of the common area"	Hearsay.
9.	The CC&Rs further provide, "The Club has the exclusive right to determine from time-to-time, in its sole discretion and without notice or approval of any change, how and by whom the Club Property shall be used."	Hearsay.
9.	Moreover, the Club has the right to change, eliminate, or cease operation of any or all of the Club Property.	Calls for a legal conclusion; hearsay; the document speaks for itself.
9.	This is confirmed at Article 17 of the CC&Rs.	Calls for a legal conclusion; hearsay.
10.	Our membership interests were memorialized by revocable licenses purchased in the nature of "Membership Agreements."	Calls for a legal conclusion; hearsay.
10.	At some point in time prior to the summer of 2010, operational and financial issues arose with respect to The Club at Black Rock, LLC (the then-owner and operator of the Club Property) and Black Rock Development, Inc., the original project developer of the Black Rock PUD and the Declarant named in the CC&Rs.	Lack of foundation; calls for a legal conclusion.
11.	On August 11, 2010, the Club at Black Rock executed a "Non-Merger Warranty Deed in Lieu of Foreclosure" conveying substantially all of the "Club Property" to Washington Trust Bank.	Lack of foundation; calls for a legal conclusion.
11.	A copy of that Deed is attached to Mr. Magnuson's Affidavit as Exhibit C.	Lack of foundation.
11.	Contemporaneously therewith, Black Rock Development, as Declarant under the CC&Rs, executed a recordable Assignment of Declarant Rights under the CC&Rs to Washington Trust Bank.	Lack of foundation.
11.	A copy of the Assignment is attached as Exhibit D to Mr. Magnuson's Affidavit.	Lack of foundation.
12.	Washington Trust Bank thereafter deeded the "Club Property" to West Sprague Avenue Holdings, LLC, a Washington Trust Bank holding company.	Lack of foundation; calls for a legal conclusion.

MOTION TO STRIKE: 3

12.	A copy of the Deed is attached to Mr. Magnuson's Affidavit as Exhibit E.	Lack of foundation.
12.	Washington Trust Bank also assigned the declarant rights it had taken from Black Rock Development, by assignment to West Sprague Avenue Holdings, LLC.	Lack of foundation; calls for a legal conclusion.
12.	A copy of that Assignment is attached as Exhibit F to Mr. Magnuson's Affidavit.	Lack of foundation.
13.	Through that closing, the Golf Club acquired title to the "Club Property" and an Assignment of Declarant Rights under the CC&Rs that West Sprague Avenue Holdings had received from Washington Trust Bank (which in turn had received the same from Black Rock Development).	Lack of foundation; calls for a legal conclusion.
13.	Copies of the Deed and Assignment are attached to Mr. Magnuson's Affidavit as Exhibits G and I.	Lack of foundation.
14.	There was no Membership Plan in effect at the "Club Property" at the time the Golf Club purchased the same.	Lack of foundation; calls for a legal conclusion.
14.	The Club at Black Rock had terminated the preexisting Membership Plan prior to the closing.	Lack of foundation; calls for a legal conclusion.
14.	A copy of the Termination Notice is attached to Mr. Magnuson's Affidavit at Exhibit M.	Lack of Foundation.
15.	As previously noted, as part of the Golf Club's purchase of the "Club Property" from Washington Trust Bank and West Sprague Avenue Holdings, the Golf Club received an assignment of the declarant rights under the CC&Rs.	Calls for a legal conclusion; hearsay; the documents speak for themselves.
16.	Article 27.7 of the CC&Rs provides that the declarant rights under the CC&Rs may be assigned by the Declarant (Black Rock Development, Inc.) "to any successor who takes title to all or part of the Property in a bulk purchase for the purpose of development and sale."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
17.	...and acquired an assignment of the declarant rights from Washington Trust Bank and West Sprague Avenue Holdings...	Calls for a legal conclusion.
20.	For example, pursuant to Article 17.1 of the CC&Rs, the Club has the right to change the use of the Club property in its discretion.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
20.	Moreover, Article 16 gives the holder of the declarant rights (which are claimed by the Golf Club) the authority to develop a portion of the property (including the "Club Property") in such phases as the Declarant deems	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks

MOTION TO STRIKE: 4

	appropriate. See Article 16.1.2(f).	for itself.
21.	Further, during the period of declarant control (which extends to July 31, 2021), in accordance with the terms of Article 2.43 of the CC&Rs, the Declarant has the ability to annex additional property into the PUD for sale and development.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
21.	Article 22.2 provides: "When Declarant has determined that no further property shall be added to the Project, Declarant shall notify the [Black Rock Homeowners] Association in writing.	Hearsay; the document speaks for itself.
21.	Until such notice is given, Declarant retains the right to designate additional property as Expansion Property."	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
21.	The Declarant retains the right to designate additional property as Expansion Property, and no such notice has been given to the Black Rock Homeowners' Association as would otherwise be required to terminate said right under Article 22.2.	Lack of foundation; calls for a legal conclusion; hearsay; the document speaks for itself.
22.	...as the successor Declarant...	Calls for a legal conclusion.
22.	This is consistent with the terms of Article 27.7 of the CC&Rs.	Lack of foundation; calls for a legal conclusion; calls for hearsay; the document speaks for itself.

Affidavit of John F. Magnuson

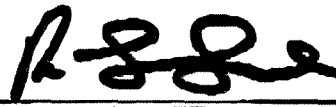
Paragraph	Objectionable Statement	Objection
8.	Pursuant to said Assignment of Declarant Rights, Black Rock Development, Inc., as Declarant under the CC&R's, assigned the Declarant Rights to Washington Trust Bank:.	Calls for a legal conclusion.
10.	...also assigned the rights it had acquired from Black Rock Development, Inc. (the Declarant Rights)...	Calls for a legal conclusion.
12.	...together with the Declarant Rights under the CC&R's previously assigned by Black Rock Development, Inc. to Washington Trust Bank (which in turn assigned the same to West Sprague Avenue Holdings, LLC at the time Washington Trust Bank conveyed the "Club Property" to West Sprague).	Calls for a legal conclusion.

MOTION TO STRIKE: 5

15.	...by which West Sprague A venue Holdings, LLC assigned to The Golf Club at Black Rock, LLC the Declarant Rights under the CC&R's.	Calls for a legal conclusion.
16.	...assigning whatever Declarant Rights Black Rock Development, Inc. (as Declarant) may have retained under the CC&R's.	Calls for a legal conclusion.

DATED this 3rd day of November, 2011.

LUKINS & ANNIS, P.S.

By 

PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

MOTION TO STRIKE: 6

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of November, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-446-1132



PETER J. SMITH IV

MOTION TO STRIKE: 7

STATE OF IDAHO } SS
 COUNTY OF KOOTENAI }
 FILED: 999

2011 NOV -4 AM 8:05

CLERK DISTRICT COURT

Patty Bailey
 DEPUTY *ps*

PETER J. SMITH IV
 ISB #6997
 LUKINS & ANNIS, P.S.
 Suite 502
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 Coeur d'Alene, ID 83814-5155
 Telephone: (208) 667-0517
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 Email: pjs@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
 limited liability company; ROBERT C.
 SAMUEL; JOE K. DONALD AND LISBETH
 LILLEMORE DONALD, husband and wife;
 WAYNE A. GIANOTTI AND CAROLYN M.
 GIANOTTI, Trustees of the Gianotti
 Revocable Trust U-A dated January 29, 1991;
 RUSSELL M. WICKS AND EVELYN L.
 WICKS, husband and wife; BUDDY C.
 STANLEY AND JUDITH L. STANLEY,
 Trustees of the Stanley Family Trust dated
 February 26, 2004; CRAIG R. FALLON AND
 M. ELLEN FALLON, husband and wife,

Plaintiffs,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
 an Idaho limited liability company,

Defendant.

NO. CV-2011-2786

NOTICE OF HEARING REGARDING
 MOTION TO STRIKE

Date: November 16, 2011

Time: 4 o'clock p.m.

NOTICE IS HEREBY GIVEN that on Wednesday, November 16, 2011, at the hour of
 4 o'clock p.m., or as soon thereafter as counsel may be heard, in the Courtroom of the above


NOTICE OF HEARING REGARDING
 MOTION TO STRIKE: 1

entitled Court, 324 West Garden Avenue, Coeur d'Alene, Idaho, before the Honorable John T. Mitchell, the Plaintiffs' will call on for hearing their Motion to Strike.

DATED this 3rd day of November, 2011.

LUKINS & ANNIS, P.S.

By


PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of November, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

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Honorable John T. Mitchell
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PETER J. SMITH IV

NOTICE OF HEARING REGARDING
MOTION TO STRIKE: 2

STATE OF IDAHO
COUNTY OF KOOTENAI } SS
FILED: 300

2011 NOV -4 AM 8:05

CLERK DISTRICT COURT
Patty Bayle
DEPUTY *SpB*

PETER J. SMITH IV
 ISB #6997
 LUKINS & ANNIS, P.S.
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 601 E. Front Avenue
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 Facsimile: (208) 664-4125
 Email: pis@lukins.com

Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

SKY CANYON PROPERTIES, LLC, an Idaho
 limited liability company; ROBERT C.
 SAMUEL; a married man; JOE K. DONALD
 AND LISBETH LILLEMOR DONALD,
 husband and wife; WAYNE A. GIANOTTI
 AND CAROLYN M. GIANOTTI, Trustees of
 the Gianotti Revocable Trust U-A dated
 January 29, 1991; RUSSELL M. WICKS AND
 EVELYN L. WICKS, husband and wife;
 BUDDY C. STANLEY AND JUDITH L.
 STANLEY, Trustees of the Stanley Family
 Trust dated February 26, 2004; CRAIG R.
 FALLON AND M. ELLEN FALLON,
 husband and wife,

Plaintiffs/Counterclaim
 Defendants,

v.

THE GOLF CLUB AT BLACK ROCK, LLC,
 an Idaho limited liability company,

Defendant/Counterclaim
 Plaintiff.

NO. CV-2011-2786

**PLAINTIFFS' OBJECTION TO
 DEFENDANT'S MOTION FOR
 SUMMARY JUDGMENT**

Plaintiffs submit this OBJECTION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT.

I.
UNDISPUTED FACTS

Plaintiffs incorporate the Undisputed Facts from Plaintiffs' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT filed on October 19, 2011 rather than repeat them here.

II.
ISSUE PRESENTED

Whether Defendant qualifies as Successor Declarant to whom the Declarant's rights may be assigned under Section 27.7 of the Declaration.

III.
ARGUMENT

A. Standard on Summary Judgment

The standard on Summary Judgment is stated in Plaintiffs' MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT and again in Defendant's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. Plaintiffs add that "[w]here the parties have filed cross-motions for summary judgment relying on the same facts, issues, and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment." *McFadden v. Sein*, 139 Idaho 921, 88 P.3d 740 (2004). However, "[t]he fact that the parties have filed cross-motions for summary judgment does not change the standard of review; this Court must evaluate each party's motion on its own merits." *Stafford v. Klosterman*, 134 Idaho 205, 206, 998 P.2d 1118, 1119 (2000). "The filing of cross-motions for summary judgment does not establish, of itself, that there is no genuine issue of material fact, especially where the opposing motions seek summary judgment upon different issues or

theories." *State ex rel. Kempthorne v. Blaine County*, 139 Idaho 348, 349, 79 P.3d 707, 708 (2003).

B. Interpretation of Covenants, Conditions and Restrictions

Plaintiffs agree that the applicable rules of construction are as stated in Defendant's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT at Pages 7-8.

C. There is No Disputed Issue of Fact That the Period of Declarant Control Remains in Effect.

There is no dispute over whether the Period of Declarant Control. Therefore, Plaintiffs' do not raise any issue with the argument made on Pages 9-10 of Defendant's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT.

D. There are Disputed Issues of Fact that the Declarant Rights Under the CC&Rs were Assigned.

Defendant argues that there is no disputed issue of fact the Declarant Rights were assigned because of the various assignment documents that were signed and recorded. The Plaintiffs do not dispute that documents were signed, recorded and could result in the assigning the Declarant Rights but for Section 27.7 of the Declaration.

However, the existence of a signed Assignment does not automatically mean the Declarant Rights were assigned in compliance with the Declaration. The Declaration sets forth a restriction on the assignment of Declarant Rights.

E. Section 27.7 Only Allows an Assignment to a Party or Entity Who Takes Title to All or Part of the Property For The Purpose of Development and Sale.

Section 27.7 provides the limitation on the assignment of Declarant Rights: Section 27.7 states:

27.7. Assignment. Declarant may assign all or any part of the Special Declarant Rights or any of Declarant's other rights and reservations hereunder to any successor who takes title to all or

part of the Property in a bulk purchase for the purpose of development and sale. Such successor will be identified, the particular rights being assigned will be specified, and, to the extent required, concomitant obligations will be expressly assumed by such successor, all in a written instrument duly recorded in the records of the Recorder of Kootenai County, Idaho. (Emphasis added).

Section 27.7 has three (3) conditions that must be met for the permissible assignment of Declarant rights:

- The Successor Declarant must take title to all or part of the Property.
- The purchase must be a bulk purchase.
- The Successor Declarant must purchase part of the Property for the purpose of development and sale.

Only two (2) of the three (3) conditions are disputed:

1. Was there a "bulk purchase" as required by Section 27.7 of the Declaration?
2. Did Defendant purchase part of the Property for the purpose of development and sale of that property?
 - a. The Purchase of the Club Property was Not A "Bulk Purchase".

Defendant purchased the following Tracts and Lots from West Sprague Avenue Holdings, LLC and WTB:

- Tract "A" of the Plat of Black Rock, which is golf course holes 1-9 and 16-18;¹
- Tract "C" of the Black Rock Seventh Addition² and a portion of Lot 1, Block 11 of the Plat of Black Rock, which is golf course holes 10-15;³

¹ Tract "A" is shown on the Plat of Black Rock shown in Book I of Plats, Page 299 as Instrument No. 1691892 recorded August 16, 2001. Exhibit "1" of Plaintiffs' Submission of Certified Documents ("PSCD") filed October 19, 2011.

² Tract "C" is shown on the Plat of Black Rock Seventh Addition shown in Book J, Page 119 as Instrument No. 1922479 recorded January 5, 2005. Exhibit "9" of PSCD.

³ Lot 1, Block 11 is shown on the Plat of Black Rock shown in Book I of Plats, Page 299 as Instrument No. 1691892 recorded August 16, 2001. Exhibit "1" of PSCD.

- Lot 1, Block 8 of the Black Rock Fifth Addition, which is the Club House;⁴
- A parcel of land being a portion of Tract "C" of the Plat of Black Rock, which is a short portion of Kimberlite Drive;⁵
- The West 150 feet of that portion of the North half of the Southwest Quarter of the Southeast Quarter and Government Lot 10, which is a part of one of the golf course holes;⁶ and,
- Lot 1, Block 15 of the Plat of Black Rock, which is Defendant's waterfront property.⁷

The phrase "bulk purchase" is not defined by the Declaration. As used in Section 27.7 of the Declaration, the term "bulk" is an adjective. It is defined by BLACK'S LAW DICTIONARY as "(Of goods) not divided into parts <a bulk shipment of grain>." BLACK'S LAW DICTIONARY (9th ed. 2009).

BLACK'S LAW DICTIONARY also defines "bulk sale" as:

A sale of a large quantity of inventory outside the ordinary course of the seller's business. • Bulk sales are regulated by Article 6 of the UCC, which is designed to prevent sellers from defrauding unsecured creditors by making these sales and then dissipating the sale proceeds. — Also termed bulk transfer.

Id.

Merriam-Webster defines "bulk" as "the main or greater part — in bulk 1: not divided into parts or packaged in separate units 2: in large quantities." www.merriam-webster.com/dictionary/bulk last visited October 18, 2011.

⁴ Lot 1, Block 8 is shown on the Plat of Black Rock Fifth Addition shown in Book J, Page 12 as Instrument No. 1860133 recorded February 25, 2004. Exhibit "7" of PS CD.

⁵ A portion of Tract "C" is shown on the Plat of Black Rock Seventh Addition shown in Book J, Page 119 as Instrument No. 1922479 recorded January 5, 2005. Exhibit "9" of PS CD.

⁶ This parcel is not included in the Plat at Black Rock or any of the Additions. It is not part of the "Property" as defined in the Declaration.

⁷ Lot 1, Block 15 is shown on the Plat of Black Rock shown in Book I of Plats, Page 299 as Instrument No. 1691892 recorded August 16, 2001. Exhibit "1" of PS CD.

When applied in this case, these definitions suggest that a "bulk purchase" of part of the "Property" is a purchase of land reserved for future residential lots within the Black Rock PUD. This conclusion is supported by Black Rock Development, Inc.'s conduct when it platted and replatted the land. The Plat of Black Rock created a number of "blocks" of land that were reserved for future residential lots. Exhibit "1" of PSCD. However, those blocks were not platted into individual residential lots at the time the Plat was recorded. Rather, this occurred over time. For example:

- The Plat of Black Rock Second Addition was a re-plat of Lot 1, Block 2 and Lot 1, Block 8 of the original Plat that created lots out of land reserved for residential development and sale. See Exhibit "4" of PSCD.
- The Plat of Black Rock Third Addition was re-plat of Lot 24, Block 4, Lots 1 & 2, Block 6 and Lot 1, Block 7 of the original Plat that created lots out of land reserved for residential development and sale. See Exhibit "5" of PSCD.
- The Plat of Black Rock Fourth Addition was re-plat of Lots 14 & 15, Block 3 of Black Rock Third Addition creating lots out of land reserved for residential development and sale. See Exhibit "6" of PSCD.
- The Plat of Black Rock Fifth Addition was a re-plat of Lot 5, Block 5, and Lot 9, Block 7 of Black Rock Fourth Addition, Lot 6, Block 2 of Black Rock Third Addition, Tract E, Lot 4, Block 4 and Lot 9, Block 7 of Black Rock Second Addition, and portions of Tract A & C, Lots 1, 2 & 3 of Block 9 and Lots 5 & 6, Block 11 of the original Plat creating lots out of land reserved for residential development and sale. See Exhibit "7" of PSCD.

Based on the platting activity, it is reasonably apparent that "bulk" meant undivided. That is, a "bulk purchase" is a purchase of a part of the Property reserved for future residential use under the original Plat.

Defendant attempts to argue that the inclusion of personal property within in the purchase suggests this was a "bulk purchase." However, the definition of "Property" in the Declaration does not include "personal property." The term "Property" refers only to real property. Therefore, the Defendant's purchase of personal property is irrelevant.

b. The Defendant Admits It Did Not Purchase the Club Property for the Purpose of Development and Sale of the Property. But Rather for the Purpose of Developing a Golf Club and Selling Club Memberships.

The question of whether a "bulk purchase" occurred is likely moot because Defendant did not purchase the Club Property for the purpose of development and sale. The part of the Property purchased by Defendant is the "Club Property" as defined in Section 2.17 of the Declaration. Section 2.17 states:

2.17. Club Property. Means all of the real property owned by the Club or its successors or assigns plus all of the recreational and social facilities and maintenance facilities constructed thereon, which will be operated by the Club or its successors or assigns and commonly known as The Club at Black Rock, including without limitation, the golf course, the golf clubhouse, golf practice facilities, golf maintenance facilities, tennis courts, swimming pool, private beach, and any other recreational facilities offered by the Club. THE CLUB PROPERTY IS NOT COMMON AREA.

The Club Property is developed. As stated above:

- Tract "A" is golf course holes 1-9 and 16-18;
- Tract "C" is golf course holes 10-15;
- Lot 1, Block 8 is the Club House;
- A parcel of land being a portion of Tract "C" is a short portion of Kimberlite Drive;

- The West 150 feet of that portion of the North half of the Southwest Quarter of the Southeast Quarter and Government Lot 10 is a part of one of the golf course holes; and,
- Lot 1, Block 15 is Defendant's Beach Club waterfront property.

Defendant admitted it purchased the Club Property for the purpose of owning and operating a golf club. Roger Rummel, the Managing Member of Defendant,⁸ testified at the Idaho Rule of Civil Procedure 30(b)(6) deposition of the Defendant that:

- The Club Property was purchased "for the purpose of developing and selling memberships and the property, number one. Number two, if that was not possible, we reserved the right to sell the property for other purposes." Rummel Dep. at 6:21-25-7:1.
- The sales were of "[m]emberships at the Golf Club." *Id.* at 7:2-4.
- These memberships were essentially "country club" memberships. *Id.* at 7:5-6.
- Defendant has sold 172 memberships in the golf club. *Id.* at 7:13-15 as corrected by the Errata Sheet dated September 30, 2011.
- Prior to acquiring the property, Defendant made an effort to get new members to join the golf club. Rummel Dep. at 8:10 as corrected by the Errata Sheet dated September 30, 2011; *Id.* at 10:19-25.
- At the time Club Property was purchased, "it was – the intent for was to become a golf course, but we certainly reserved the right to, if it didn't pan out as a golf club, that we would figure out some future use for it." *Id.* at 10:15-18.

⁸ Rummel Deposition at 5:22-24. Referenced portions of the deposition transcript are attached to the Affidavit of Peter J. Smith IV filed October 19, 2011.

- Defendant purchased the Club Property as “an investment on the part of the Golf Club at Black Rock for the purpose of development and sale of the property and membership agreements or memberships.” *Id.* at 26:16-19 (emphasis added).
- “The primary goal was, yes, to keep the club operating, but also, from an investor standpoint, to be able to have the ability if it wasn’t to sell it as anything we wanted to sell it as. If we wanted to sell it as a circus, we could do that.” *Id.* at 38:15-22.
- “But for sure, our number one intention is to, you know, remain as a golf club. But if that’s – if that wasn’t available, then we would do something else.” *Id.* at 44:11-13.

In its MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT, Defendant argues that there are “[n]o less than three reasons” that support its argument that the Property was purchased “for the purpose of development sale.” Page 13 of Defendant’s MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. However, each of the arguments made defeat the very premise the Defendant seeks establish.

First, the Defendant states that “there is no issue of fact that both before and after the November 1, 2010 closing, the Golf Club has objectively an intention to acquire the Club Property in a bulk purchase for the purpose of development and sale.” Page 13 of Defendant’s MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. However, there were no memberships in the golf club prior to its purchase of the Property and after its purchase it has sold more than 172 memberships. *Id.* Inexplicably, the Defendant asserts that the sale of golf club memberships supports its assertion it purchased the Club Property for the purpose of development and sale.

However, the Affidavit of Roger Rummel makes it clear that the Defendant did not intend to develop and sell the Club Property:

First, the intention was to develop and sell memberships for use of the "Club Property." To that end, the Golf Club has since sold approximately one hundred seventy-two (172) memberships allowing individuals to utilize the "Club Property" in accordance with the terms of the applicable Memberships.

Second, the Golf Club always intended to retain all available rights with respect to the "Club Property" in terms of keeping all options with respect to development and sale of the same open. Specifically, it was the Golf Club's desire to develop and sell memberships in and to the "Club Property" on terms acceptable to all in order to create a vibrant and collegial golf course and recreational community atmosphere. However, in the event that such a goal no longer proved to be financially feasible or successful, at some future point in time, then the Golf Club intended to retain all rights to develop and sell the "Club Property" in a manner compliant with the CC&Rs.

The Golf Club continues to develop and sell memberships associated with the "Club Property," and to exercise the declarant rights and has done so since purchasing the "Club Property" on November 1, 2010. In doing so, the Golf Club did not waive any rights, nor did it intend to, and retains all the rights associated with all development and sale of the "Club Property" as otherwise allowed by the CC&Rs.

AFFIDAVIT OF ROGER RUMMEL IN SUPPORT OF DEFENDANT'S MOTION FOR SUMMARY JUDGMENT
at ¶¶ 18, 19, and 24 filed October 19, 2011.

The Affidavit of Roger Rummel makes it clear that the Defendant purchased the Club Property for the purpose of developing a golf club and selling memberships in that club. It did not intend to purchase the Club Property for the purpose of development and sale of the Club Property.⁹

⁹ It should be pointed out that the Mr. Rummel asserts that the Declarant Rights are necessary for the Defendant to retain the right to use the Club Property in any manner it sees fit. The Declaration provided the owner of the Club Property the unilateral right to change the nature of the Club Property without regard to whether that party or entity was the Successor Declarant. See Section 17.1.

Second, the Defendant argues that it has the exclusive right to determine how the Club Property may be used, therefore, at some unknown date in the future, it may develop and sell the Property. Page 13-14 of Defendant's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. This argument is made despite the fact that the Defendant agreed to grant the Members a right of first refusal so that "if the current investor group decided to sell the property that the existing members would have the right to first refusal to purchase it." Rummel Dep. at 31:5-10. Moreover, this very argument rebuts the assertion that the Defendant purchased the Property for "the purpose of development and sale." The Defendant states "[t]he [Defendant] acquired the Club Property in part for purposes of development and sale of Memberships." See Page 14 of the Defendant's MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT. Therefore, the Defendant could not have purchased the Property for "the purpose of development and sale" because it purchased the Club Property "in part for the purpose of development and sale of Memberships." As previously stated, Section 27.7 states that the Club Property must be purchased for the purpose of development and sale of the Club Property. This was not the purpose the Defendant purchased the Club Property. Therefore, the transfer of Declarant Right is not permitted by Section 27.7 of the Declaration.

Third, the Defendant argues that it has some unspecified intent to add "Expansion Property" to Black Rock and, therefore, this permits the transfer of Declarant Rights to it under Section 27.7. The Defendant's argument puts the cart before the horse. The term "Expansion Property" is defined in the Declaration as:

2.31. Expansion Property. Such additional real property now owned or in the future acquired by Declarant (including any Successor Declarant) as Declarant may make subject to the provisions of this Declaration, by duly recorded Declaration of Annexation.

To add Expansion Property, the owner of that land must be owned by the Declarant or the Successor Declarant. To qualify as Successor Declarant, the Defendant must be "a party or entity to whom Declarant assigns any or all of its rights, obligations or interest as Declarant, as permitted by Section 27.7..." See Section 2.50. Therefore, Defendant's argument that its intent to purchase and incorporate Expansion Property supports its assertion that it qualifies as Successor Declarant is backward. To add Expansion Property, Defendant must first qualify as Successor Declarant. If Defendant is not the Successor Declarant, it can not add Expansion Property.

The Defendant fails to show that it purchased the Club Property for the purpose of development and sale. To the contrary, the Defendant admits that it purchased the Club Property for the purpose of development of a golf club and sale of memberships in that golf club.

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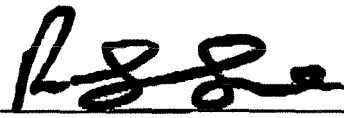
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**IV.
CONCLUSION**

There is no question of fact. Though Defendant purchased part of the Property, it did not do so in a "bulk purchase." Moreover, the deposition testimony of Roger Rummel, Affidavit of Roger Rummel, and the Defendant's own Memorandum make it clear that the Defendant purchased the Club Property for a purpose other than development and sale of the Club Property. The assignment of the Declarant Rights to Defendant is not permitted under Section 27.7 of the Declaration. The Defendant's Motion for Summary Judgment must be denied.

DATED this 3rd day of November, 2011.

LUKINS & ANNIS, P.S.

By 
PETER J. SMITH IV
ISB #6997
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 3rd day of November, 2011, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to all counsel of record as follows:

John F. Magnuson
Attorney at Law
P.O. Box 2350
1250 Northwood Center Court, Suite A
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-667-0500

Honorable John T. Mitchell
Kootenai County Courthouse
324 West Garden Avenue
Coeur d'Alene, Idaho 83814

☐ U.S. Mail
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy (FAX) 208-446-1132



PETER J. SMITH IV